

Ohio GFOA 2021 Annual Conference HOT TOPICS IN HUMAN RESOURCES



CONSULTANTS TO MANAGEMENT

Akron | Cincinnati | Dublin | Lima

1.800.282.0787

www.clemansnelson.com

Polling Question #1

Are your policies gender neutral?

The Supreme Court LGBTQ Trilogy

- Decided June 15, 2021
- *Bostock v. Clayton County*
 - Employee terminated for “conduct unbecoming.” Participation in a gay softball league.
- *Altitude Express v. Zarda*
 - Employee terminated days after mentioning their sexual orientation.
- *R.G. & G.R. Harris Funeral Homes LLC v. EEOC*
 - Employee fired after presenting as a female (initially hired as male).

The Supreme Court “Bostock” Trilogy

- The Supreme Court of the United States ruled that Title VII of the Civil Rights Act of 1964 prohibits workplace discrimination against gay, lesbian, and transgender people.
- The employers and the Trump administration argued that Congress did not intend for Title VII to protect LGBTQ persons and the term "sex" did not cover gay and transgender status.
- In a 6-3 opinion authored by Justice Neil Gorsuch and joined by Chief Justice John Roberts, the majority held that an "employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex."
- Explaining further, "[s]ex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids." The Court also clarified that an employer who intentionally fires a homosexual or transgender employee, even in part, because of this sex-based status "violates the law even if the employer is willing to subject all male and female homosexual or transgender employees to the same rule."

The “Obvious” Take-Aways

1. Employers should review their employment policies and practices to ensure they are inclusive of this clarified expansive definition of "sex." Particular policies to review may include equal employment opportunity, anti-discrimination and anti-harassment policies. Recommend adding sexual orientation and gender identity be expressly included in the list of protected characteristics to which employment policies generally apply.
2. Second, beyond the obvious employment policies, employers should also do a deeper dive to review other policies and practices that tangentially relate to LGBTQ rights. Such as:
 - Dress code
 - Adoption/childcare policies
 - Health benefits
 - Parental leave
3. If an employee reports harassment related to their use of a male or female restroom located on company premises, should the company convert single-user restrooms to gender-neutral restrooms, as is already required of employers in states like California? While the court's decision did not expressly address these issues, which were not before it, employers may want to consider how to proactively address these potential pitfalls.
4. Employers should be thinking more broadly and consider creating or updating a diversity and inclusion mission statement to accurately reflect the company's culture and expectations for its workforce. This is particularly important not just in light of the recent Bostock decision, but also given recent events resulting in activism and increased dialogue around racial inequalities, systemic injustices and biases.

The Not-so-Obvious Take-Aways

1. What do you ask on your application? Male or Female?
Male/Female/Non-binary? Don't ask?
2. Do you have employee ID card that indicate a gender? Do you want to reconsider?
3. Engage in high-level training for supervisory staff.
4. Employers should be thinking more broadly and consider creating or updating a diversity and inclusion mission statement to accurately reflect the company's culture and expectations for its workforce. This is particularly important not just in light of the recent Bostock decision, but also given recent events resulting in activism and increased dialogue around racial inequalities, systemic injustices and biases.

What is your preferred pronoun?

The Non-binary Basics

- What is a “preferred gender pronoun”?
 - A "preferred gender pronoun" is the pronoun that a person chooses to use for themselves.
- What are some commonly used pronouns?
 - She, her, hers and he, him, his are the most commonly used pronouns.
- There are also lots of gender-neutral pronouns in use. Here are a few you might hear:
 - They, them, theirs (Xena ate their food because they were hungry.)
 - This is a pretty common gender-neutral pronoun.... And yes, it can in fact be used in the singular.
 - Ze, hir (Xena ate hir food because ze was hungry.)
 - Ze is pronounced like "zee" can also be spelled zie or xe, and replaces she/he/they.
 - Hir is pronounced like "here" and replaces her/hers/him/his/they/theirs.
- Just my name please! Some people prefer not to use pronouns at all, using their name as a pronoun instead.
- Never, ever refer to a person as “it” or “he-she” (unless they specifically ask you to.) These are offensive slurs used against trans and gender non-conforming individuals.

The First Amendment vs. Preferred Pronouns

- Meriwether v. Hartop, et al. (AKA Shawnee State)
 - Professor alleged that his faith prohibited from complying with the students preferred pronoun request
 - The Professor was given a written warning
 - With regard to the free speech claim, the Sixth Circuit panel ruled that the First Amendment protects the academic speech of university professors. In reaching this determination, the Sixth Circuit analyzed the U.S. Supreme Court's decision in Garcetti v. Ceballos, 547 U.S. 410 (2006). In Garcetti, the Supreme Court held that, in normal circumstances, "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." However, the Sixth Circuit held, in a decision consistent with the approach of the Fourth, Fifth, and Ninth Circuits, that the ruling in Garcetti does not apply in the academic context of a public university. Accordingly, the university violated Meriwether's First Amendment rights.
 - It is important to note that the Sixth Circuit's ruling in this case only addressed the university's motion to dismiss the complaint. Accordingly, for purposes of the appeal, Meriwether's factual allegations were assumed to be true. He still has to prove his claims.

Polling Questions 2 and 3

2. *Are you considering a vaccine mandate?*
3. *Are you continuing to permit telework or making telework a permanent option?*

Month 18 of 2021.....vaccinations,
masks and returning to work oh my!

Understanding the Legal Basis

- The U.S. Equal Employment Opportunity Commission has advised that employers may require COVID-19 vaccinations, provided that employers offer exemptions to individuals with
 - disabilities that prevent COVID-19 vaccination and
 - sincerely held religious beliefs that prevent COVID-19 vaccination.
- Employers may also request that an employee provide proof of receipt of a COVID-19 vaccination to ensure that employees have received the vaccine.
- All information regarding vaccine status should purely be in the purview of Human Resources; no information is provided to supervisors or other employees

Understanding the Legal Basis

- There are no HIPAA privacy rule issues in asking for this information.
- There are other laws that protect employee medical information, as well as information collected from employees as part of a medical exam or in response to a medical inquiry.
- Employers should inform employees that they will follow best practices and comply with applicable laws in maintaining privacy and security with respect to employee vaccination status.

Teleworking Working

- ❖ **What does Your Team's Remote Work Environment Look Like???**

Teleworking Working

❖ Does it look like this?



Teleworking Working

❖ Or more like this?



Teleworking Working

Studies show that that many employees can be equally, if not more, productive when working remotely. While the feasibility of remote work varies depending on an employee's job responsibilities, expanding remote work options can offer various benefits. These benefits can include:

- Increased flexibility
- Increased retention
- Reduced greenhouse emissions
- The ability to tap into a broader talent pool
- Fewer opportunities for diseases such as coronaviruses to spread

Notably, by expanding remote opportunities post-coronavirus, employers can reduce the amount of human interaction that takes place at a physical location. Also, by allowing remote work, employees who are sick are less likely to physically attend the office.

Best practices for expanding remote work include creating outlined companywide remote practices, rather than leaving remote work approval requests up to the subjective opinion of a manager.

Teleworking Working

❖ Suggestions

- ❖ Daily 'Huddles' with an Agenda
- ❖ Visible Dashboards
- ❖ 1:1 Check-ins with Team
- ❖ Engage through IM, Intranet
- ❖ Build a Plan & Inform Your Team
- ❖ What Tools do They Need to Collaborate

Teleworking Working

- ❖ Daily Huddle
 - ❖ Have an Agenda
 - ❖ 15 minutes
 - ❖ Rules
 - ❖ Everyone needs to have video capability
 - ❖ Switch order of who goes first
 - ❖ Have fun!
 - ❖ Quick updates (wins, losses, special)
 - ❖ Check the Team pulse
 - ❖ Maybe a competition?

Teleworking Working

- ❖ Dashboards/KPIs
 - ❖ Does your team have measurable, tangible results?
 - ❖ Create a visible dashboard and share it with the team
 - ❖ Highlight successes
 - ❖ Solicit input from team to determine why something did not go as planned
 - ❖ What can be done to improve the change for success in the future?

Teleworking Working

**You MUST KNOW what's going on,
Because if you DON'T,
You and Your Organization are at risk**

Teleworking Working

Policies Consideration:

- ❖ Cyber Security Policy/Training/Instruction
- ❖ Time Keeping/Recording Policy
- ❖ Set Regular Working Hours with office hours
- ❖ Professional Attire Policy (even for working from home)
- ❖ Define who is eligible

Premium

**I DON'T REMEMBER WHAT I
ACTUALLY DO HERE**

**AND AT THIS POINT I'M TOO AFRAID
TO ASK**

Returning to Work

- Acknowledge the impact of COVID-19 on mental health
- Adopt new mental health resources tailored to addressing challenges that COVID-19 poses
- For example, mental health training and awareness programs via EAP, virtual therapy, virtual wellness sessions, financial wellness, etc.
- Inform employee of all available resources

Returning to Work

- Create intentional opportunities for one-on-one check-ins with employees to empower them to speak up
- Reduce everyday anxiety by asking employees about their home life, loved ones, pets etc.
- Create an optional virtual meeting for your employees – OFFICE HOURS - with no order of business but to share feelings or concerns
- Be transparent and human

Poling Questions 4 and 5

4. Are you having difficulty filling vacant position?

5. Are you planning on a comprehensive review of your compensation and benefits package in the next 12 months?

Vacancies, Turnover and Compensation

- The turnover tsunami has started.....
- Given the labor market challenges, employers may have to pay higher wages ad hoc to make up for shortcomings in their compensation structure.
- For instance, employers may need to pay for competitive and critical jobs at the 60th percentile instead of at the median.
- Ensure that your market intelligence is current and that how you price jobs is appropriate for this environment. Employers need more real-time information rather than year-old information.
- For those in lower-paid jobs, a 10 percent or 20 percent pay increase can change a worker's standard of living significantly for the better. But employer-provided benefits can be just as important. The pandemic, for instance, caused many employees to realize the importance of reliable child care. Employers that provide child care support could have an edge when it comes to recruiting employees.

RETENTION AND RECRUITMENT

WHAT ARE EMPLOYEES LOOKING FOR?

RECRUITING IN PUBLIC SECTOR OHIO

- Accentuate the positives
 - Service to others = gratification, giving back to the community
 - Sell Your Culture
 - OPERS
 - Utilizing Social Media and Technology
 - Opportunities
 - Advancement
 - Other positions, divisions, etc.
- Review Compensation Practices
- Presence with higher education

APPEALING TO THE NEXT GENERATION

- More Flexibility
- Technology
- Public Service
- Social Agenda / Activism

Questions?



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