

HOT SHEET

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Full-Circle HR

HR Trends:

- HR experts find in this increasingly hybrid workplace environment that organizations who are able to manage by objectives and deliverables as opposed to time worked will be much more successful.
- According to The Harris Poll, as of May 2022 40% of workers surveyed have 'side hustles' or second jobs—up from 34% in December 2020.
- SHRM research suggests that 24% of employees have experienced political affiliation bias at work (either positive or negative) and 20% of respondents say that they have experienced negative behaviors from their co-workers or peers due to political alliances.
- Some legal experts say that employee legal charges arise more often from failed relationships than from what the employer did wrong. When choosing an employment attorney, make sure you choose one who understands the importance of rapport and relationship.
- The Adecco Group, a leading recruitment firm, found that 75% of employees in 25 countries want to stay with their current companies; most would stay if there were growth opportunities.

Disability Accommodation Trends

Until recently the number 1 physical disability for which employees have requested accommodation has been back pain. Since COVID, the growing disability has become Long COVID and it could become the new number 1.* There are state and federal laws that govern disability accommodation and it is important to know and follow the requirements and to use best practices in doing so. Another important consideration is employee retention. If you have a strong performer who could continue to perform their job with accommodation, it is likely worth your while to at least have the conversation with them. While the American's with Disabilities Act (ADA) applies to employers with more than 15

employees, some states, including Washington have laws that offer protections to most employees with a disability, as defined by their laws. Washington State has a very broad definition of a disability and also has an employee/employer paid benefit mandated and administered by the State, Paid Family and Medical Leave (PFML). Information about each of these can be found at [WA State Disability and Employers PFML](#).

Common workplace accommodations are generally not as expensive as employers might fear (according to one study the most common amount is \$500). Sometimes they do not have a direct cost associated and could possibly improve productivity. Some of the most com-

mon accommodations include: work from home/hybrid work, intermittent leave, a leave of absence, flexible scheduling, an ergonomic chair and/or keyboard, a balance ball, reserved parking, an office closer to the bathroom, more bathroom breaks, etc. According to a US DOL survey in 2020, 56% of employers said that the accommodations cost nothing.

According to the Job Accommodation Network, 75% of employers surveyed said that the accommodation were either very effective or extremely effective. Additionally, in this survey employers reported that direct benefits from the accommodations included:

- Retaining a valued employee (90%);
- Increasing

the employee's productivity (68%);

- Eliminating costs associated with training a new employee (58%);
- Increasing the employee's attendance (57%);
- Increasing the diversity of the company (36%);
- and • Saving workers' compensation or other insurance costs (30%).

Surprisingly, despite these possible advantages, there is still an unmet need. It is estimated that 40% of employees who could benefit from an accommodation do not get one. As we continue to face challenges with finding workers and with increasing rates of health diagnosis such as diabetes, anxiety, depression, and more, workplaces need to adapt.

Classifying Employees and Contractors

The U.S Department of Labor has proposed a clarification regarding classification of contract worker versus employee. This proposal would rescind a 2021 rule that control over the work and opportunity for profit or loss carry greater weight than the other factors used to make this decision. Under this proposal employers would use a 'totality of the circumstances analysis,' in which no factors would have a pre-determined weight. The concern that the DOL has about misclassification is that they see many cases where misclassification unduly disadvantages the most vulnerable workers who then lose out on state and federal benefits and protections.

The factors used in determining the status include:

1. Does the worker perform work that is primary and integral to the business operations or do they supervise any employees, particularly those who do perform primary work?
2. The permanency of the relationship.
3. Is the worker reimbursed for tools and materials used? Do they use their own tools, equipment, and materials?
4. The nature and degree of employer control. Who sets pay and hours? Who determines what work gets done and how? Does the worker work for other clients?
5. Is their opportunity for the worker to earn a profit or lose money?
6. The level of skill, initiative, judgement, and ability to compete in the open market. Do they have

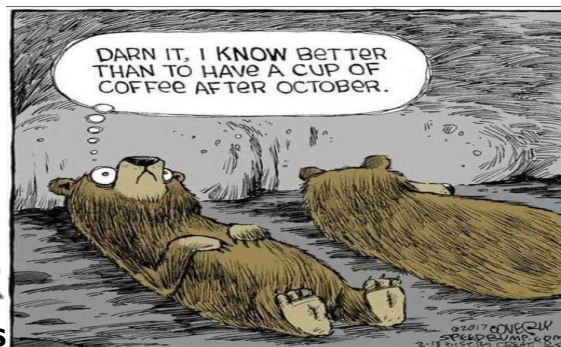
their own website/place of business and have business cards? Can they perform their role with minimal training?***

There are also some factors that have been determined as 'immaterial' to the determination of status such as:

- Where the work is performed;
- The lack of a formal agreement;
- License by a state or local government; and
- The mode of pay.***

Some typical problems that arise are in the construction industry where independent contractors hire sub-contractors who do not meet the preceding requirements. Another area is franchises where the corporate organization maintains control over much of how the business

is run thus making workers of these franchises more like employees of the franchisor. Other sticky areas arise when for-profit businesses allow employees or others to volunteer for their organizations. Volunteers are allowed when they donate their services to religious, public service, and not-for-profit organizations. More areas of confusion on this topic include trainees and people who perform their duties from home. One rule of thumb is that if you pay someone as an employee to do a particular job, then it is reasonable to question calling someone a contractor (or volunteer) for the same job. This is true even when the worker prefers contractor status.



Life is really simple, but we insist on making it complicated.—Confucius

*SHRM, *Trends in Accommodating Employees with a Disability*, Shepherd, Leah, October 12, 2022.

**elaw Advisors, *Fair Labor Standards Act—Independent Contractors*, March 14, 2022.

***US Department of Labor, Wage&Hour Division, *Fact Sheet 13 Employment Relationship under the FLSA*, March 2022.