Where Have All The Workers Gone?

HR Tackles The Chronic Labor Shortage

March 21, 2023





What You'll Receive

- Full slide presentation (pdf format)
- Link to the recorded audio presentation
- Opportunity for ComplianceHR demonstration and free trial!

Questions?

• If you have any questions, please use the Q&A box on your screen

Today's Webinar Host

Kimball Norup
CEO of ComplianceHR
norup@compliancehr.com





Who We Are



- Artificial Intelligence
- Infrastructure enterprise

- Subject matter expertise
- Knowledge management team
- Case databases

What we do:

Deliver expert guidance in a fraction of time and cost vs traditional methods

Compliance HR

Simplify the complexity of employment law



PolicySmart™

Create and maintain an up-to-date and legally compliant employee handbook



The Reference Center

A Comprehensive Solution for Employment Law and Common HR Compliance Questions



Navigator Independent Contractor

Remove risk in determining Independent Contractor status



Navigator Onboarding

Assemble and produce legally compliant onboarding documents



Navigator Overtime

Determine if an employee is exempt or non-exempt



Navigator Leave

Reduce the risk and administrative burden of leave management

ComplianceHR Solutions to Help You Combat the Labor Shortage



PolicySmart:

- Federal and statecompliant templates
- Innovative compliance timeline
- Handbook policy checklists
- Automated twice monthly legal update emails



Navigator Independent

Contractor:

- Simple questionnaires for inputting individual fact patterns
- Risk assessments driven by expert analysis of thousands of court cases and federal and state regulations
- Instant, actionable guidance on lowering your misclassification risk



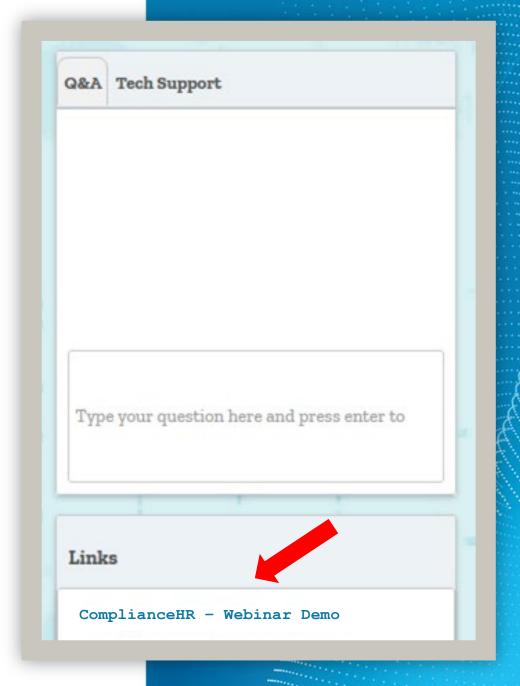
Navigator Onboarding:

- State-compliant employee applications
- Conditional offer letters that are well-suited for at-will employees
- Customizable NDAs to alert employees to the types of company information that is considered confidential

Register for a Navigator Suite Demonstration

Benefits of a custom demonstration:

- Discuss your organization's requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies
- Provide free trial in Navigator Suite sandbox



Today's Webinar Presenter

Bruce Sarchet

Shareholder

Littler | Sacramento





The U.S. Labor Shortage



U.S. BUREAU OF LABOR STATISTICS

Civilian labor force participation rate

Percent

68.0

66.0

64.0

62.0

60.0

58.0

| Dec |
|------|------|------|------|------|------|------|------|------|------|------|
| 2002 | 2004 | 2006 | 2008 | 2010 | 2012 | 2014 | 2016 | 2018 | 2020 | 2022 |

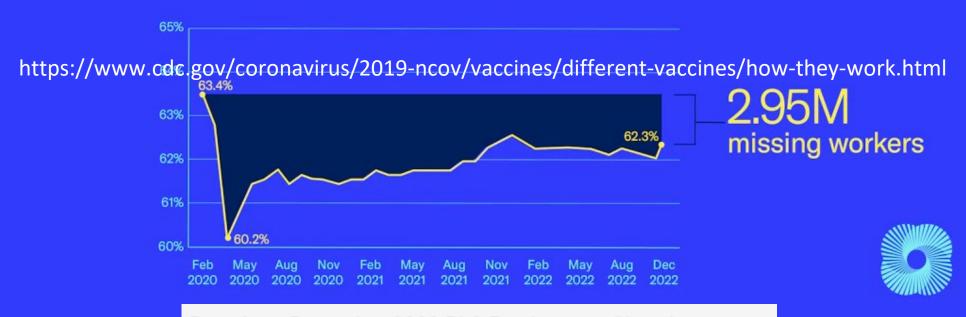






Labor Force Participation

There would be 2.95 million more workers today if labor force participation was the same as in February 2020



Data from December 2022 BLS Employment Situation report.

Bloomberg Law⁻

Daily Labor Report ®

US Shale Bosses Worry About Labor Shortages Heading Into 2023

Dec. 29, 2022, 9:05 AM







- Energy executives surveyed by Dallas Fed focus on cost issues
- Most see WTI oil ending next year at \$80 a barrel or higher

US shale executives remain concerned about the outlook for rising costs going into 2023 as they continue to struggle with hiring and retaining workers, according to the Federal Reserve Bank of Dallas.

"The labor market continues to be incredibly tight in the Permian Basin," one unidentified respondent was quoted as saying in the survey. "Our company is relying





TRADING ECONOMICS

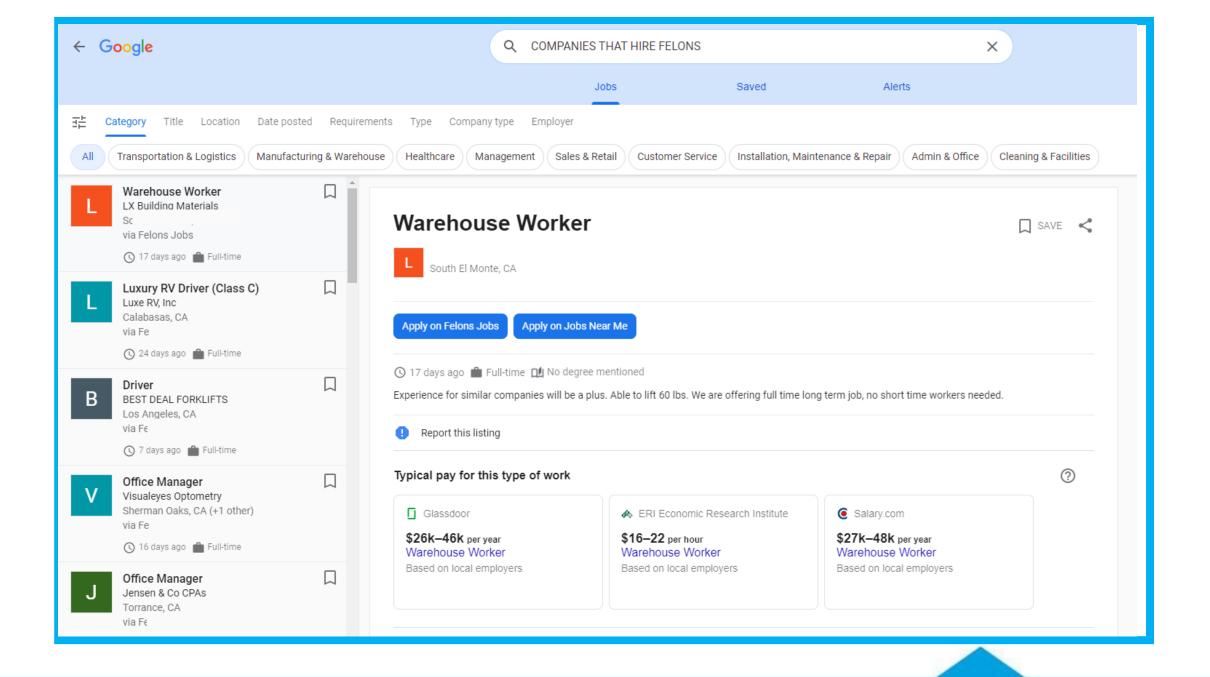
Crude oil

SURVEY!





Total Number of Employees Working Today:						
Total Number of Job Vacancies:						
Total Employees plus Vacancies:						
Vacancy Rate (Percent):						





GET STARTED

RESOURCES

OPPORTUNITIES

NEWS

ABOUT US

Q

Second Chance Employers Network

These companies have created fair chance hiring

Here at Jails to Jobs we get regular phone calls from companies asking how they can become second chance employers and hire workers who were formerly incarcerated. And we tell them that the best thing they can do is to learn from those who have already done it.

There are many ways to operate a second chance hiring program, each as unique as the people who put it together. We've created a new resource — the Second Chance Employers Network — to inspire employers as they consider starting one of their own.

We're including the stories of a variety of second chance employers, from small to large. And in industries ranging from restaurants and recyclers to employment agencies and manufacturers. You'll learn what their businesses are all about, how they created second chance hiring, and what they learned in the process.

If you'd like more information, many of them will be happy to talk to you. Most people doing this work feel they're part of an important movement that is helping create a more diverse workforce and a more equitable and just society. Other helpful tips on how to begin a second chance hiring program and find dedicated employees can be found here.

This is definitely a work in progress, and we're just getting started. If you — or anyone you know — has a similar story to share, please <u>contact us</u>, and we'd be happy to include you and others in this resource.

Learn about second chance employers

(a) View recent blog posts



First Step Alliance creates proposed credit union geared toward unbanked, including returning citizens January 31, 2023



How nurse practitioners, physician assistants and registered nurses can increase their practice's business by offering free tattoo removals to qualified patients January 30, 2023

Tattoo Removal

» Check out all of our posts.

Free Interview Clothes

Donate

Stay Connected!

Receive blog articles and occasional announcements.

Your email (required)

First name (optional)

Last name (ontiona

Why???



INSIDER

Newsletters Log in Subscribe

US MARKETS CLOSED In the news **▼** Dow Jones +0.02%

▼ Nasdaq +2.16%

▼ S&P 500 +1.05%

▼ META +2.79%

▼ TSLA +4.73%

Juliana Kaplan Dec 16, 2022, 2:00 AM



Miami Beach, Florida, Domino's Pizza, banner offering \$3000 signing bonus for assistant managers. Jeffrey Greenberg/Universal Images Group via Getty Images

- Federal Reserve Chair Jay Powell said that there's a "structural labor shortage" happening right now.
- That's due to early retirement, deaths from COVID, and not enough immigration, according to Powell.
- The structural labor shortage means workers will still hold the upper hand for years.

Bloomberg Law

Incarceration Is Drag on Fed Jobs Goal, U.S. Growth, Bostic Says

"Incarceration is a drag on our ability achieve our maximum-employment goal," Bostic said Tuesday at the start of the latest iteration of the Fed's Racism and the Economy series, this one focused on the criminal justice system.

full potential, Federal Reserve Bank of Atlanta President **Raphael Bostic** said.

"Incarceration is a drag on our ability achieve our maximum-employment goal," Bostic said Tuesday at the start of the latest iteration of the Fed's Racism and the Economy series, this one focused on the criminal justice system.

Bloomberg Law

Daily Labor Report ®

Americans' Shift to Be Their Own Bosses Is Lasting in Pandemic

The surprising startup boom that took root in the U.S. last year shows little sign of having slowed, and, in fact, looks to be one factor in the nation's high turnover rate in jobs.

Several weeks after the pandemic hit last March, economists spotted an uptick in the number of people filing initial tax paperwork for new businesses. It was unusual because the Great Recession, by comparison, saw a downward slide in such applications to the Internal Revenue Service.

The latest data reveal the numbers continue to climb. People have filed almost 3.1 million of the IRS forms -- called Employer Identification Number applications -- in the first 26 weeks of this year, according to figures this month from the U.S. Census Bureau, which tracks the filings. That's up from the roughly 2.4 million filed in the second half of last year, which was a record surge.

sole proprietorships
business entity formation
noncompete agreements
resignation from employment
federal tax
coronavirus
employee turnover and retention

And let's not forget, some people still are just afraid to come back to work.



How Are Employers Responding?

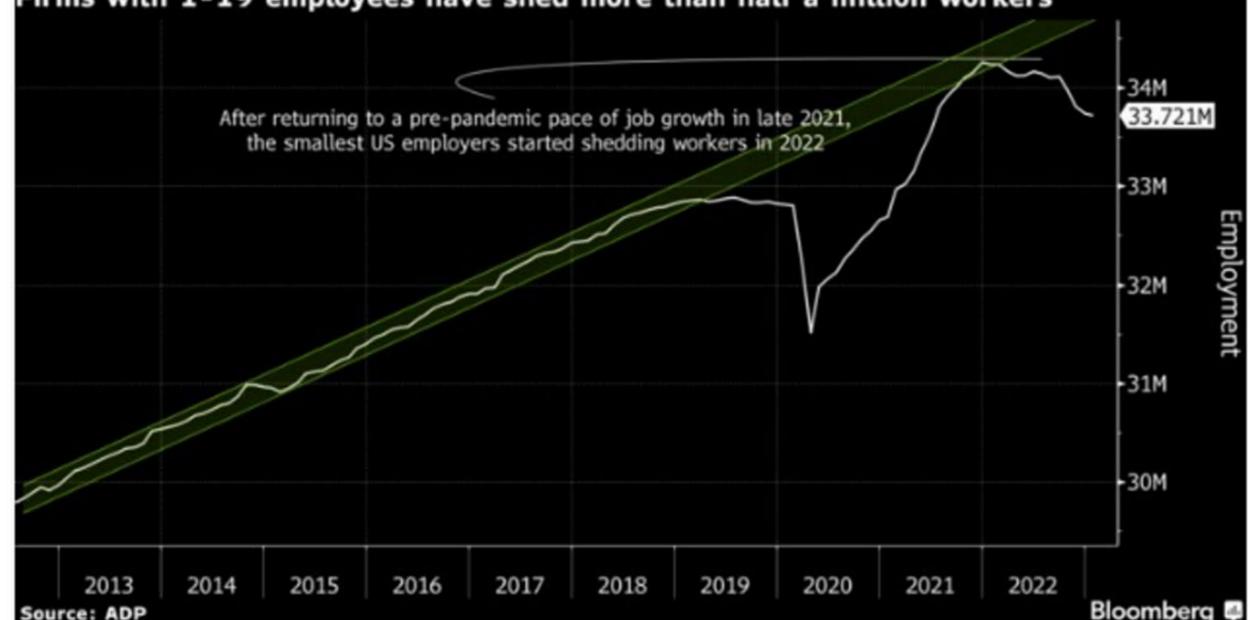
Employer Responses

- Advertise everywhere.
- \$50 to sit for an interview.
- Use data analytics.
- Remote work.
- Hiring bonuses.
- Incentive Compensation.
- Zippy New Fringe Benefits.
- "Fun" Work.



Meanwhile...

Smallest Firms Struggle to Keep Workers Firms with 1-19 employees have shed more than half a million workers



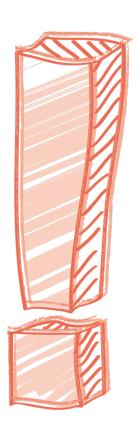
Agenda

- 1. Before You Recruit
- 2. Recruiting Everywhere
- 3. Al Tools
- 4. Privacy
- 5. Incentive Compensation
- 6. Pay Equity
- 7. Novel Benefits



STANDARD DISCLAIMERS!

- This is a lot of information to cover!
- So, we won't cover everything.
- Plus, we don't know everything because tomorrow will be different from today.
- Some of our slides have more words than usual, they are provided as a future resource.
- And remember, this webinar does not substitute for advice of counsel!



Before You Recruit...

Before You Recruit From Outside...

- 1. Restructure?
- 2. Internal Transfer?
- 3. Temp. Agency?
- 4. Contractor?
- 5. Recall From Layoff?

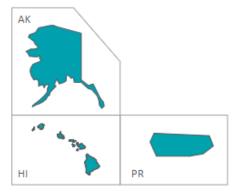


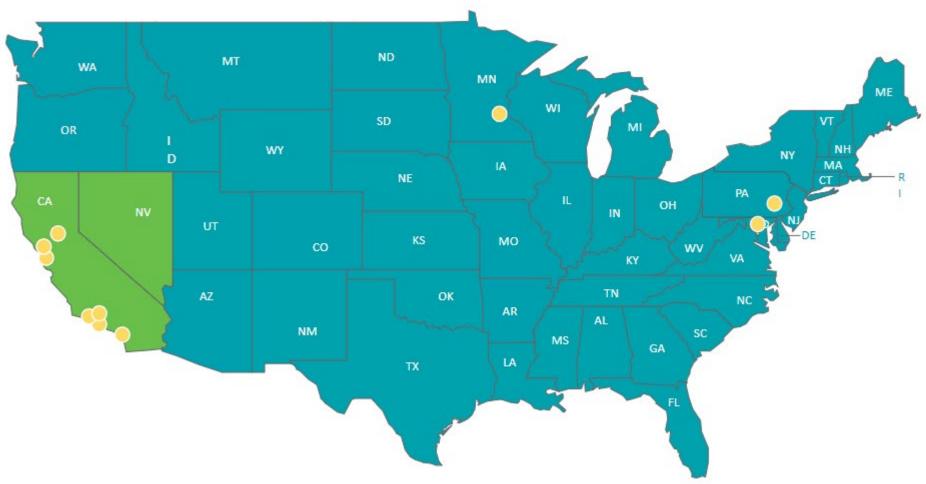
Right To Recall Laws

Long Beach Los Angeles San Francisco Carlsbad Oakland Pasadena Sacramento

Minneapolis Philadelphia Baltimore

California Nevada





Right To Recall

- Generally applies to hospitality, airports, event centers, and janitors, maintenance and security at commercial buildings.
- Layoff caused by COVID.
- Recall in order of seniority.
- Some contain a right to cure.

Recruiting Everywhere



I have an idea, why not look for remote workers in other cities/states?

What's going on in Colorado?

THE DENVER POST

BUSINESS • News

Colorado remote workers need not apply: Companies avoid state due to salary-posting law

Sen. Jessie Danielson said she is open to looking at ways to boost enforcement of the state's Equal Pay for Equal Work Act

THE WALL STREET JOURNAL.

BUSINESS | MANAGEMENT | MANAGEMENT & CAREERS

Many Companies Want Remote Workers—Except From Colorado

After a new state law that requires employers to disclose salaries for open positions, some are advertising jobs available anywhere in the U.S. but Colorado

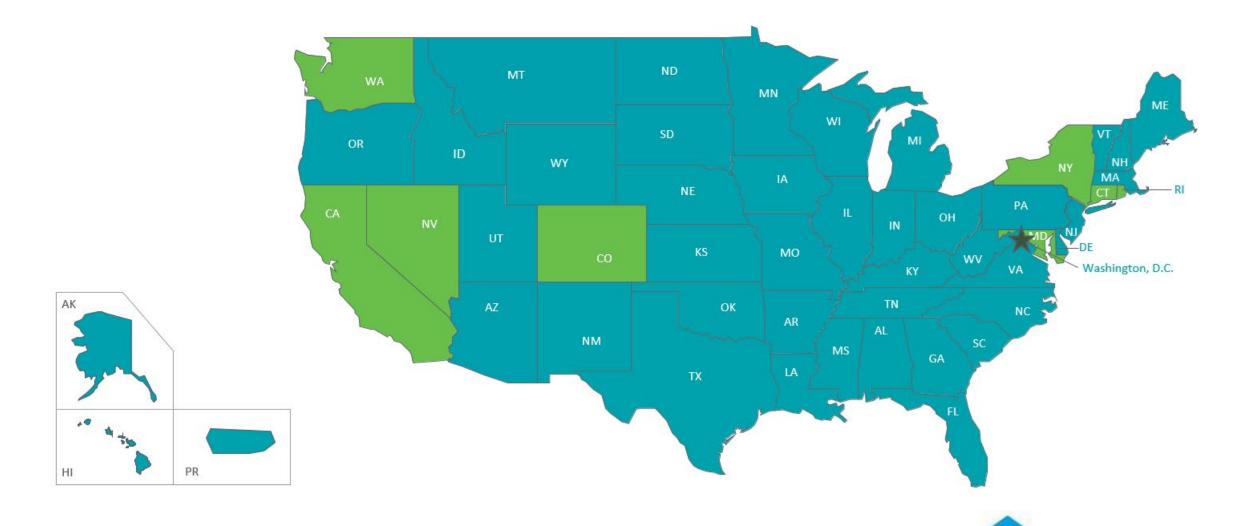


MOTHERBOARD

TECH BY VICE

Why Corporations Won't Hire Remote Workers in Colorado

Pay Transparency Laws



California Pay Transparency for Pay Equity Act (SB 1162)



Overview

- Effective Date January 1, 2023
- Applies to employers with 15 or more employees (in any pay period and at least one is located in CA)
- <u>Job Posting Disclosure</u>: Requires disclosure in the posting itself of "pay scale" information for jobs if the position may ever be filled in CA, either in-person or remotely.
- <u>Record retention requirement</u>: Wage rate history for each employee for the duration of the employment plus <u>three</u> years after the end of employment
- <u>Pay Data Reporting requirement</u>: Expands current reporting requirements for employers with 100 or more workers and adds reporting requirement for employers with 100 or more labor contractors
- **Enforcement**: Private right of action for injunctive and other relief. Civil penalties up to \$10,000 per violation.

What Information Must Be Disclosed in California

For jobs located in California

Job Posting

- Must include a pay scale defined as "salary or hourly wage range that the employer reasonably expects to pay for the position"
- ☐ Law does not address whether pay scale includes bonuses, commissions, health benefits or paid time off need to wait and see how courts interpret
- ☐ If the employer uses a third party to publish or post a job, they must provide the pay scale to that third party who must include it in the posting

Applicants & Employees

- ☐ For current employees upon request, must provide pay scale for position in which employee is currently employed
- ☐ For applicants (someone "seeking employment" not currently employed by the employer) upon reasonable request, must provide pay scale for position
- ☐ law does not differentiate between job seekers in general and someone who has submitted an application

California Recordkeeping Requirements



Must maintain a record of each employee's job title and wage history.



The records must be maintained for the duration of the employee's employment plus **three years** thereafter.



These records must be made available to the Labor Commissioner for inspection to determine if there is a pattern of wage discrepancy. An employer's failure to keep these records creates a rebuttable presumption in favor of an employee's claim.

Hiring: Not Any Easier – Local Requirements May Vary

- Employment Eligibility & Verification Requirements:
 Is the Company required or prohibited from using an electronic employment verification system?
- Are there restrictions/prohibitions on considering <u>criminal history</u> in employment decisions?
- Are there restrictions/prohibitions on requesting information about <u>arrest history</u>?
- Does the state have a mini-Fair Credit Reporting Act law?
- Does the state law restrict an employer's access to an applicant's or employee's social media accounts?

Hiring: Not Any Easier – Local Requirements May Vary

- State restrictions on job <u>Application fees, deductions, or other</u> <u>charges</u> required?
- Are <u>fingerprints & Photographs</u> prohibited?
- Are pre-employment <u>medical & psychological examinations</u> prohibited?
- Are <u>salary history inquiries</u> prohibited?
- What <u>notices</u> are required at the time of hire?

Compliance HR

Navigator Onboarding



Lays the Groundwork for Smooth Employee Onboarding

The employee onboarding process often involves producing multiple documents that must meet state and federal regulatory requirements. For multi-state employers, differing state regulations add to the paperwork and increase exposure to potential compliance issues.

When to Begin the Employee Onboarding Process?

As legislation surrounding new hires continues to evolve, it is essential to make compliance a priority starting from day one.

Customize Onboarding to Your Organization's Needs

Protect your organization and perfect your onboarding practices with Navigator Onboarding with easy to create multi-state and federal compliant offer letters, employment applications, and non-disclosure agreements – all customized to meet your organization's needs within a matter of minutes.

What Makes Navigator Onboarding Different?

Since Navigator Onboarding is fueled by the subject-matter expertise of Littler, and it is built on Neota's Al-powered platform, you will receive up-to-date information where it matters the most.

Al Hiring Tools



I have another idea, maybe Al recruiting tools can help.

Use of AI is on the Rise

- MarketsandMarkets forecasts the global artificial intelligence (AI)
 market size to grow USD 58.3 billion in 2021 to USD 309.6 billion by
 2026.
- A 2019 survey on LinkedIn found that 67% of recruiters are already using some form of AI to save time in the hiring process.

Al Hiring Tools Promise To:

1. Source Candidates

- Process data at scale to broaden and build talent pools and post targeted job ads
- E.g., LinkedIn, Indeed, Hiretual

2. Screen Candidates

- Efficiently screen raw sources for specific criteria
- Leverage tools to test and assess candidates' abilities
- E.g., HackerRank, Pymetrics, Self Management Group, Harver

Al Hiring Tools Promise To:

3. Interview Candidates

- Provide an engaged and customized experience
- Provide analysis of facial expressions, choice of words, and voice tonality
- E.g., HireVue, VidCruiter, Wepow, Interview Mocha, Codility

4. Select Candidates

- Achieve better diverse and inclusive hiring objectives
- Select candidates based on consistent criteria and process
- Hire better candidates

Questions to Ask Before Joining the Trend

- 1. Who is going decide whether and how to use Al hiring tools?
 - Ensure HR and HR legal are part of the decision-making process
- 2. What are your goals and objectives for using Al hiring tools?
 - Just because it's a trend, does not mean it meets your goals
- 3. Does the selected Al hiring tool align with your goals?
 - All hiring tools aim to achieve different objectives
- 4. What are the metrics to use to determine whether Al tools are meeting your goals?
 - Develop metrics to monitor and assess AI tools' performance

Privacy in Recruiting



Online Recruiting: A Good Idea?

Who doesn't recruit online? Everyone is doing it!

Privacy Risks:

- Job applicant privacy notice
 - who needs to give notice (Company vs. LinkedIn, Indeed, etc.)
 - Should you have a job applicant specific privacy policy?
- Retention Period security risk, and regional privacy laws
- Global applicant pool requires compliance with local laws
- Using Applicant Tracking System (ATS) potential exposure point for breaches

Online Recruiting: A Good Idea?

Practical Risks:

- More isn't always better. Filtering through a surplus of unqualified applicants.
 Overworking the HR department.
- Missing out on qualified applicants
 - ATS doesn't always catch who you need you may be getting candidates who are just really good at online profiles
 - Not everyone has an online profile: may unintentionally be recruiting from a set pool of applicants (e.g., age, seniority of the position, region, etc.)
- Verifying the authenticity of the applicant's online profile

Taking it Easy: Scaling back the background check

- Background checks take too long should you take a "lighter" approach?
 - Shortcuts can backfire background checks help ensure that you have a qualified candidate, even if the candidate comes from a known source
 - Allowing someone access to your confidential information (e.g. proprietary information, business ideas, etc.)
 - Social medial posts or other toxic work environment that affect employee morale.
 - Negligent hiring claim, reputational harm, loss of customer faith

Researching Applicants Online

What about Googling as a shortcut? So much information is online!

Risks:

- Lawful, off-duty conduct.
- Discovery of information not otherwise known (e.g., posts revealing disability or national origin or religion).
- Inconsistent use of the resource.
- Implicit bias against/in favor of certain groups.



Better Options

- Refrain from Googling job applicants
- Maintain consistency.
- Prohibit HR / Talent Acquisition from researching applicants.
- Use an outside service to perform social media searches, and this is the <u>only</u> way that background checks are done.
- All 50 states have on-line registries of sex offenders.
- The Office of Foreign Assets Control maintains a list of "Specially Designated Nationals": www.treas.gov/offices/enforcement/ofac

If You Do Decide to Google the Applicant...

- 1. Check all applicants for the same position.
- 2. Conduct identical searches for all applicants.
- 3. Document searches while conducting them.
- 4. Screen "unlawful" information from decision makers.
- 5. Check the authenticity and reliability of information.
- 6. Give applicants the chance to explain adverse information.
- 7. Maintain records of information considered by decision makers.



Hiring Candidates with a Criminal Record

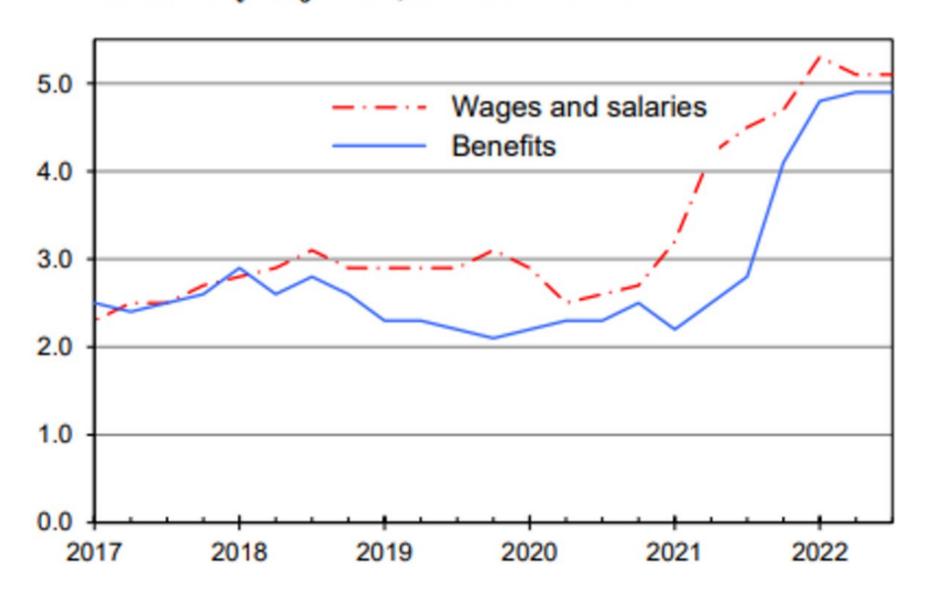
- Yes, there are benefits to hiring candidates with a record:
 - Employer Incentives e.g., WOTC (Work Opportunity Tax Credit), and state specific tax incentives
 - They may stay with you longer
 - Not all crimes are created equal. They may be a qualified candidate for the job - skills they learned in prison may be transferrable to the job
 - People make mistakes

Incentive Compensation



Sometimes the best way to solve a problem?

Chart 2. Twelve-month percent change, not seasonally adjusted, civilian workers



Any Great Ideas Out There?

Incentive to Refer

- \$1,500 \$30,000
- "Hot Job" Bonus: Refer for a particular position, earn a bigger bonus
- Limited time offer
- Conditions?
- Beware the echo chamber



Incentive to Accept an Offer

- Sign-on bonuses: Not just for executives anymore!
- Even for non-exempt employees



But... can we get our money back?

"No Backsies"

- Establish the terms in the offer letter good enough?
 - Agreement to pay?
 - Authorization to deduct from wages?
- State deductions laws
 - Limits on types of deduction
 - Limits on amount of deduction
 - Very challenging to deduct / "claw back" earned wages
- But... has the bonus been earned? Well... where did you define what "earned" means?

Incentive to Stay on Board

- Longevity bonus
- Monthly, quarterly, annual performance with a "must be present to win" condition
- Draft carefully, control rogue promises.
 - What will earn the bonus? What performance do you want?
 - Once the bonus is earned, when will it be paid?
 - State wage payment laws

Incentive to Work

- Commissions
- Production bonuses
- Hours worked bonuses
- "Hazard Pay"
- Attendance bonuses
- Shift differentials



The Regular Rate of Pay.

Regular Rate of Pay

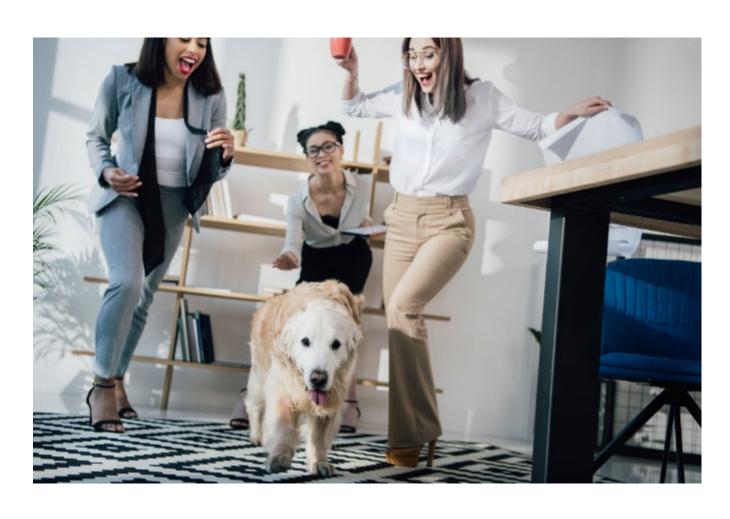
- If you pay non-discretionary bonuses in CA (based on a set formula), be sure to include those payments in the regular rate of pay.
- Example, at the end of the quarter, when the bonus is paid, go back and recalculate the regular rate of pay, and "true up" all overtime hours worked in the quarter.
- Also true up all missed meal/rest premiums paid in the quarter, as well as pay for missed heat recovery breaks or lactation breaks.

Non-Monetary Incentives?

- Gift cards
- Lottery tickets
 - Heck, employer operated lotteries!
- Stock options



Really Non-Monetary Incentives?



- Dogs at the office
- Beer at the office
- Amusement park at the office
- Sweatpants on Fridays?
 - Well... this isn't 2019.

Perhaps the biggest incentive of all in 2023?

Remote Work.

Five Common Questions Asked by Telecommuters

- 1. How do I clock in?
- 2. Who pays my electric bill?
- 3. What happens if I slip and fall?
- 4. What should I do with all of this topsecret work stuff?
- 5. Can I keep doing this forever?

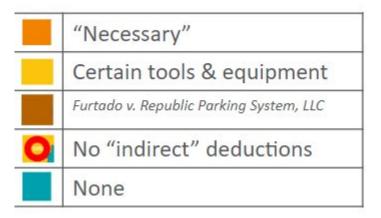


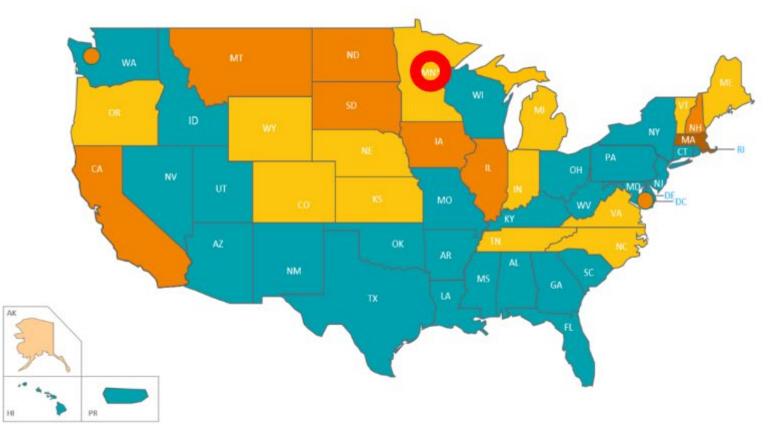


Seriously? Utilities? Rent?



Who Pays For What?





Note: The same rules generally apply for both non-exempt and exempt employees.

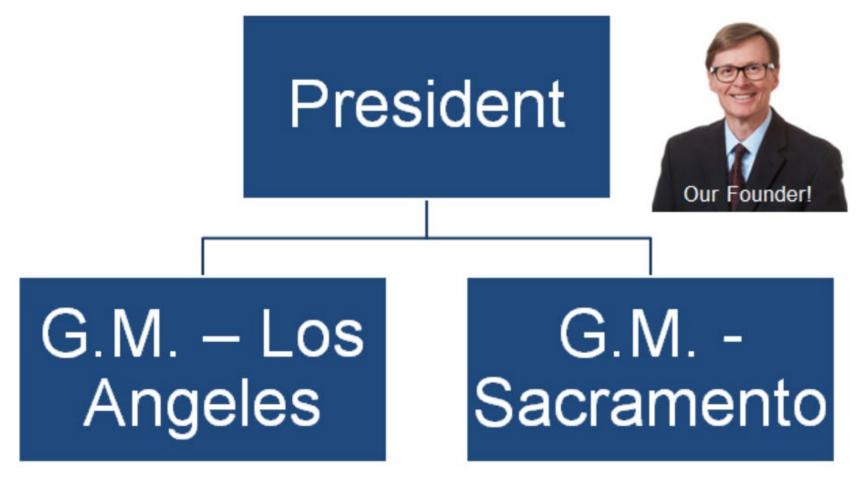
Practical Suggestions

- Don't take the hammer.
- Learn and apply the local requirements.

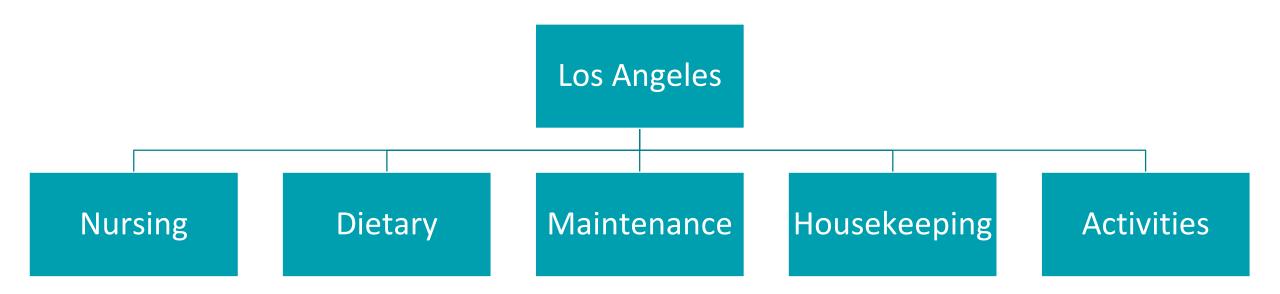
Pay Equity



Org Chart – The Bruce Sarchet Nursing Home Co.



The BS Nursing Home Co. – Branch Office Org. Chart



California Law: Before 2016

- Former test: employee must be paid the same as someone of the opposite gender at the same establishment for equal work.
- Pay disparities between L.A. and Sacramento cannot violate the law.
- Pay disparities between Dietary and Maintenance cannot violate the law.

California Law: After 2016

- New test: employee must be paid the same as someone of the opposite gender/race at the same employer for substantially similar work.
- Pay disparities between L.A. and Sacramento could violate the law.
- Pay disparities between Dietary and Maintenance could violate the law.

Employer's Affirmative Defense

- Pay Differential May Lawfully Be Based on:
 - 1. Seniority
 - 2. Merit
 - 3. Quantity/Quality of Production
 - 4. Bona Fide Factor Other than Sex
- But, Employer Must Explain Entire Wage Differential



Suggestion

- Audit!
- Use the A/C privilege for your audit!

Novel Fringe Benefits

Novel (and not so novel) Fringe Benefits

- 1. Set your goals
- 2. Know your audience
- 3. Follow the rules
- 4. Use your imagination
- 5. The devil is in the details



1. Set your Goals

- Long-term retention
- Short-term hiring
- Executive retention
- Rank and file employees
- Critical roles or locations
- Improve overall morale and engagement



2. Know your Audience

- Employee Demographics
 - Age
 - Type of work
 - Locations
- Company culture
- \$\$\$\$ Cost parameters



3. Follow the Rules

- Taxable vs. Non-taxable benefits
 - Watch imputed income
 - Contribution limits
- App based benefits for everything!
- ERISA reporting and disclosure
- HIPAA Privacy/Security
- ADA
- Title VII



4. Use Your Imagination

Health and Wellness Benefits

- EAPs +
- Dedicated mental health spaces
- Home gym equipment raffles/reimbursement
- Nutritional/diet counseling
- Support groups for everything!

- Concierge medical plans
- LGBTQ+ Benefits (Bostock)
- Fertility Benefits/HRAs
- Critical illness benefits
- Personal parental leave concierge/administrators

Child Care Benefits

- Child-care referrals, credits and back-up care
- On-line "fun" programs
- On-line academic classes & tutoring
- College counseling services
- Child ride-share credits

- Non-Taxable child-care benefits
 - Tuition Reimbursement Plans
 - Dependent care flexible spending accounts

Financial Assistance

- Tuition reimbursement
- Student loan reimbursement
- College savings plans
- Adoption assistance
- Financial planning & investment
- Legal assistance
- Car allowances vs commuter benefits

- Long term care insurance
- Higher levels of disability, life and AD&D insurance
- Supplemental unemployment insurance
- Housing...

Grandparents and Puppies

- Elder Care
 - Elder day care
 - Elder care support groups
 - Home health care referrals
- Pet Benefits
 - Vet insurance
 - Training & puppy classes
 - Pet friendly work environments



5. The Devil is in the Details

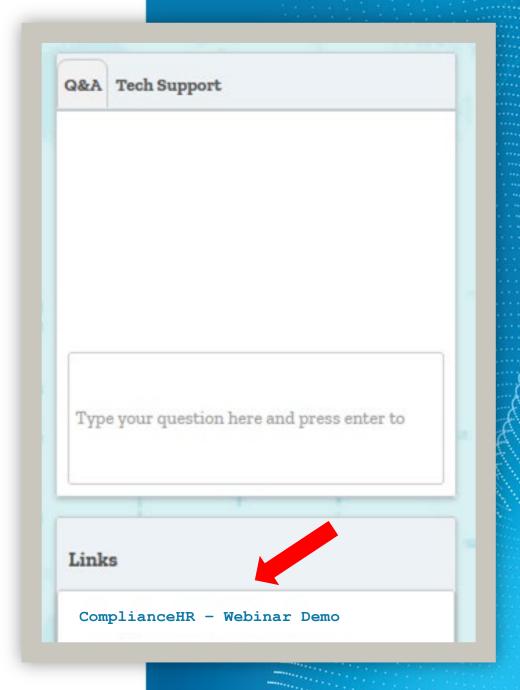
- Lots of new benefits and great ideas
- Read the fine print
- "But other employers/my last employer had this benefit" doesn't mean it is legally compliant
- Check with benefits counsel (proactive legal advice is cheaper than fixing legal problems later)



Register for a Navigator Suite Demonstration

Benefits of a custom demonstration:

- Discuss your organization's requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies
- Provide free trial in Navigator Suite sandbox



Questions?

Please add any additional questions to the Q&A box