

00:00

The broadcast is now starting all attendees are in listen only mode

00:08

Welcome to today's webinar everyone,

00:10

Thank you for joining us. I'm Ana Hobson from hrsimple and I will be moderating today's webinar.

00:14

Today's presenter is Ashley from Ogletree Deakins and she will be presenting Top 10 HR Issues. If you have any questions for her please go ahead and enter them in the question box.

00:27

She will get to them throughout the webinar.

00:28

If you do need any more webinars

00:32

for viewing you can go to [hrsimple.com](http://hrsimple.com)

00:35

forward slash events

00:37

this recording will be up there by the

00:39

end of today as well as postings for

00:41

other webinars from valuable resources

00:43

like ogletree deakins

00:48

hr simple provides federal and state

00:50

specific manuals we make employment law

00:53

easy our books are written by top labor

00:55

attorneys

00:56

and they include topics like vacation

00:58

policies employee documentation and how

01:00

to fill out the i9 form

01:04

so before we go ahead and get started i

01:05

just wanted to go over ashley's bio

01:08  
in response to the coronavirus pandemic  
01:10  
ashley has led ogletree's nationwide  
01:13  
unemployment response team  
01:15  
in this role she tracks unemployment  
01:17  
changes nationwide and provides counsel  
01:19  
to clients on unemployment related  
01:21  
issues  
01:22  
in addition ashley is the co-chair of  
01:24  
the ogletree covid19 litigation practice  
01:26  
group  
01:27  
colvin 19 litigation involves all areas  
01:30  
of employment law as well as personal  
01:32  
injury related claims  
01:34  
in this role ashley has been able to  
01:35  
utilize her substantial past litigation  
01:37  
experience that includes employment  
01:39  
litigation personal injury litigation  
01:42  
medical malpractice defense and complex  
01:45  
toxic tort defense  
01:47  
outside of coven 19 ashley concentrates  
01:50  
her practice in management side  
01:52  
employment litigation including

01:53  
defending claims against wage and hour  
01:56  
discrimination wrongful discharge and  
01:58  
breach of contract  
02:00  
so on that note i'm going to go ahead  
02:02  
and pass things over to ashley so we can  
02:04  
go ahead and get started  
02:11  
thank you anna can you see my screen now  
02:14  
yes it looks great  
02:16  
all right thank you well thank you all  
02:18  
for joining us today um as anna said if  
02:20  
you have any questions you can put them  
02:22  
in the chat box and i'll be alerted that  
02:24  
they're there um i will either answer  
02:26  
them as we go along through the  
02:28  
presentation at the appropriate topic  
02:30  
time or i'll get to them at the end um  
02:33  
also you can see here you have my email  
02:34  
address you're also will i'm more than  
02:36  
happy to answer questions after this  
02:39  
session is over  
02:40  
so when anna contacted me she asked me  
02:42  
to talk about some of the top um

02:45  
employment issues that employers around  
02:47  
the country are seeing today so we're  
02:49  
going to talk about things in broad  
02:51  
strokes and go into some detail on these  
02:54  
key issues that employers are facing  
02:58  
of course in 2021 a lot of it is nuanced  
03:02  
because of covid 19. we're going to hit  
03:04  
some covets specific issues um at the  
03:07  
end of the presentation but as all of  
03:10  
you know covet is not the only thing  
03:12  
that we're dealing with so we're going  
03:13  
to cover things broader than covet 19  
03:16  
today um and the first one i thought  
03:19  
that we should talk about is really  
03:21  
hiring and to some extent uh retention  
03:24  
so we are seeing across the country that  
03:27  
employers in all industries across the  
03:31  
board are having trouble retaining  
03:34  
employees and hiring new employees there  
03:37  
is clearly a hiring shortage  
03:40  
some people believe that that is  
03:42  
partially due to the enhanced

03:44  
unemployment benefits that were provided  
03:47  
by congress  
03:48  
it is unclear whether or not that is  
03:50  
true or not  
03:52  
all of the republicans led states all  
03:55  
the states have republican governors  
03:57  
except for two  
03:59  
actually have ended those enhanced  
04:01  
benefits they ended those enhanced  
04:03  
benefits in either the end of july or  
04:06  
end of june or in july um since that  
04:09  
time we've only had one unemployment  
04:11  
report come out that did not show a  
04:13  
significant difference in unemployment  
04:16  
after the benefits were cut off but it  
04:18  
was still early and only caught part of  
04:19  
the states  
04:21  
regardless those unemployment benefits  
04:24  
if you're in a republican or a  
04:26  
democratic-led state will be expiring on  
04:29  
labor day weekend so there will not be  
04:32  
any more enhanced unemployment

04:35

after labor day weekend and there is no

04:38

indication from dc or from congress that

04:41

those benefits are going to be extended

04:43

again

04:44

so that means um any of the extra

04:47

dollars per week any of the extra weeks

04:49

of unemployment all of that is going to

04:52

be going away here in just the next

04:54

couple of weeks which will hopefully

04:56

increase the applicant pool for your

04:59

jobs

05:00

other things that we've seen though

05:02

across the country and ogletree actually

05:04

did a survey of all of our clients i'm

05:07

across the country

05:09

to get an idea of what people are doing

05:11

and to give you a little background that

05:13

i did not give at the beginning ogletree

05:15

is a labor and employment specialty firm

05:18

so all we do is labor and employment

05:19

we're one of the largest firms that

05:21

specializes in labor and employment in

05:23  
the country we have 900 lawyers in all  
05:27  
areas in all states around the country  
05:28  
and some international so this survey  
05:31  
was truly across industry across  
05:34  
populations  
05:35  
and what we saw were some interesting  
05:37  
key things that folks are doing to try  
05:40  
and hire new employees  
05:43  
one of the biggest ones is reducing or  
05:46  
eliminating hiring requirements so this  
05:49  
is including things like no longer  
05:51  
screening for marijuana in  
05:53  
pre-employment or no longer screening  
05:55  
for marijuana in non-safety sensitive  
05:58  
jobs  
05:59  
some employers are eliminating all drug  
06:02  
screening in pre-employment  
06:04  
they are also narrowing disqualifying  
06:06  
conditions so that means it's things  
06:08  
like you have to have a high school  
06:10  
diploma well now they're allowing a gde  
06:12  
ged or even removing those requirements

06:16  
um they're losing aptitude tests they're  
06:18  
easing prior experience standards again  
06:22  
the goal is to have a larger applicant  
06:24  
pool  
06:25  
for their hiring  
06:27  
we're also seeing employers across the  
06:29  
country target specific populations  
06:31  
this includes trade schools and  
06:33  
community colleges  
06:35  
of course lots of employers are  
06:36  
targeting each other's employees  
06:38  
and then we're also seeing a lot of  
06:40  
targeted hiring for military veterans  
06:43  
and for former prisoners  
06:46  
for both veterans and prisoners is an  
06:48  
added benefit if you hire folks from  
06:50  
those job pools in the form of tax  
06:53  
credits so if you are hiring any of  
06:55  
those tax pools  
06:57  
make sure you know about the tax credits  
06:59  
that can be provided for your employer  
07:02  
the other things that we're seeing



07:04  
happen around the country are simply an  
07:06  
increase in base pay as we saw uh the  
07:09  
government contracting numbers go up for  
07:12  
base pay and with there being a talent  
07:15  
shortage pay is increasing  
07:18  
we're also seeing a trend of increased  
07:21  
signing bonuses  
07:23  
most are paid after the completion of a  
07:25  
probationary period but not necessarily  
07:28  
we're seeing referral bonuses being  
07:30  
given to existing employees if they give  
07:33  
good recommendations for people that are  
07:35  
hired and then increase in benefits  
07:38  
this includes more vacation time more  
07:40  
sick time and scheduling flexibilities  
07:44  
we're seeing this being increasingly  
07:46  
important especially to your  
07:49  
employees and applicants who have school  
07:51  
age children with coven 19 and the  
07:53  
closures of daycares and schools and  
07:55  
just sickness  
07:57  
flexibility has become

07:59  
one of the most important things we see  
08:01  
for those group of workers that have  
08:04  
children and or parents that they have  
08:07  
to take care of  
08:08  
we're also seeing across the board  
08:10  
increases in shift shifted rentals so  
08:12  
for those hard to hire shifts really an  
08:14  
increase in the shift ditcher and  
08:16  
differential pay  
08:18  
and then also transportation related  
08:20  
benefits so again  
08:21  
increasing hiring pools you may have  
08:23  
people who are farther away or if you do  
08:25  
not have transportation so those kinds  
08:28  
of benefits are going up as part of  
08:30  
hiring strategies and again i think one  
08:33  
of the top issues we're seeing for  
08:34  
employers around the country  
08:36  
is hiring new folks  
08:39  
from a legal perspective one thing we  
08:40  
want to make sure that you remember  
08:42  
are that there are multiple states now

08:45  
that have what we call ban the box laws  
08:49  
for those of you who are not familiar  
08:51  
ban the box is kind of the common term  
08:53  
that we use for states that have  
08:55  
limitations on background checks  
08:58  
for um criminal  
09:00  
history so what the goal is here is to  
09:03  
get more uh formerly incarcerated  
09:06  
persons into the workforce  
09:08  
so for example if you were arrested for  
09:11  
a drug charge  
09:12  
20 years ago and have been clean since  
09:14  
then they don't want that to be held  
09:16  
against you anymore  
09:18  
this map will show you some of the  
09:19  
states that do have currently banned the  
09:22  
bots laws for private employers if  
09:24  
you're in one of these states please  
09:25  
make sure you know about your ban the  
09:27  
box law uh the specifics of it because  
09:30  
it will impact the kind of background  
09:32  
checks that you can run and how you

09:35  
should apply those background checks to  
09:37  
applicants  
09:39  
one of the other big issues that we're  
09:41  
seeing around the country is how  
09:45  
employers are dealing with the new  
09:47  
marijuana laws  
09:49  
so this is really becoming an increasing  
09:51  
issue around the country  
09:53  
this map shows you the different states  
09:56  
where marijuana is legal in some  
09:58  
capacity so the dark green areas show  
10:02  
where it is legal for marijuana for  
10:05  
medical and recreational use  
10:07  
the light green in the map shows where  
10:10  
marijuana is legal for medical use only  
10:13  
and then the blue gray areas or the  
10:15  
states where marijuana is still illegal  
10:18  
what we are seeing though is there is a  
10:20  
rapid normalization of the use of  
10:24  
marijuana throughout this country  
10:26  
regardless of anyone's personal feelings  
10:28  
on it and we are seeing many multi-state

10:31  
employers having to juggle with this map  
10:34  
and again as you saw in the prior slides  
10:36  
it impacting the ability to hire but all  
10:39  
of the different marijuana laws  
10:41  
make testing of marijuana  
10:43  
a much bigger issue again pre-employment  
10:46  
testing the truth is the marijuana  
10:49  
testing is  
10:51  
not the same as alcohol testing you  
10:53  
can't get real  
10:55  
instant instant um notification of  
10:58  
whether or not someone is high  
11:00  
so what you really need to do in any  
11:02  
state where you have light green or dark  
11:04  
green is making sure that you know the  
11:07  
rules that you know the testing  
11:08  
requirements and if you do have someone  
11:11  
who appears to be impaired at work it is  
11:14  
critical that you know that and you  
11:16  
really document the impairment so that  
11:19  
you have a reason for testing and so  
11:22  
that you can show that there was

11:23  
impairment on the work site not just  
11:26  
use over the weekend especially in a  
11:28  
state where it would be legal for your  
11:30  
employees to do that so this has become  
11:32  
a real issue for folks and so if you're  
11:35  
in any of these states where you have  
11:36  
the dark green or the light green  
11:38  
please make sure you are digging in and  
11:40  
understanding  
11:43  
your state's marijuana laws and in your  
11:46  
state um testing requirements but again  
11:49  
when we're talking about marijuana one  
11:51  
of the most important things you can do  
11:53  
is again if there is some kind of  
11:58  
impairment at work that you are really  
12:00  
documenting slurring language slurring  
12:03  
steps um slow to react those kinds of  
12:07  
things are documented so that you can  
12:09  
not only show that there was a good  
12:11  
faith reason for the test but also that  
12:13  
you had a good faith belief of an  
12:15  
impairment on the job

12:18  
and again one of the big things we're  
12:20  
seeing is that marijuana use being  
12:22  
dropped off of many pre-employment  
12:24  
panels in the green the light green and  
12:27  
the dark green states across the country  
12:29  
as people are trying to  
12:32  
hire more folks  
12:35  
another big thing that we're seeing come  
12:36  
up for employers across the country  
12:39  
has to do with remote work  
12:42  
so  
12:44  
remote work has of course always been  
12:47  
something that has been available  
12:49  
but certainly after the pandemic and  
12:52  
after everyone was sit home  
12:54  
remote work has really now become  
12:56  
normalized  
12:58  
for many employers it is a workable  
13:00  
solution for a variety of different  
13:03  
situations and different issues  
13:05  
it allows for an ada accommodation when  
13:08  
that is required um it has really been

13:10  
beneficial for lots of folks and what  
13:13  
we're seeing as we  
13:15  
start to head out of the pandemic  
13:18  
is that remote work is going to be the  
13:20  
new norm  
13:22  
for many employers across the country  
13:24  
and for many employees we're seeing that  
13:27  
on a full-time basis and we're seeing it  
13:29  
on kind of a part-time basis um in and  
13:32  
out i'll tell you where i work they  
13:34  
would like for us to be in the office at  
13:36  
least two days a week but they're okay  
13:38  
if we're remote three days a week it is  
13:40  
really an individualized um  
13:43  
preference for us and it has worked  
13:45  
because we figured out the technology  
13:48  
however there are a couple of really  
13:50  
important legal issues that you need to  
13:53  
keep in mind as hr professionals if you  
13:55  
are going to continue to allow folks to  
13:58  
work remotely on a permanent or  
14:01  
semi-permanent basis



14:03  
um the big three out there that you need  
14:05  
to work through  
14:07  
are  
14:08  
mainly your two tax issues so  
14:11  
unemployment taxes and payroll taxes so  
14:14  
historically those are paid in the place  
14:16  
where the person works  
14:18  
that would be in the location of your  
14:21  
building  
14:22  
but when we're talking about folks who  
14:24  
permanently work remote  
14:26  
they may not work remotely in the same  
14:30  
state that they're assigned to or you  
14:32  
may have a location that's kind of on a  
14:34  
state border so you have lots of people  
14:36  
working in different places and so you  
14:39  
really have to go through the  
14:40  
unemployment tax and the payroll tax  
14:43  
considerations for each locale to  
14:46  
determine are they working at home so  
14:49  
much that now you must pay the payroll  
14:52  
or the unemployment tax in that location

14:55  
versus in your home location during  
14:58  
covid we saw this be a huge issue in the  
15:01  
northeast new york and new jersey  
15:04  
actually sued each other  
15:06  
over this issue because the switch and  
15:08  
tax base for all of the folks who used  
15:11  
to work in new york city and were then  
15:13  
working from home primarily in new  
15:15  
jersey was enormous so this has become a  
15:19  
real issue that the taxing authorities  
15:21  
in the different states are really on  
15:23  
top of and you want to make sure you're  
15:25  
paying your unemployment in your payroll  
15:27  
taxes in the right location  
15:29  
another issue that we have seen come up  
15:32  
is mainly due to a change in law in  
15:35  
colorado  
15:36  
two years ago colorado passed the equal  
15:39  
pay for equal work act  
15:41  
this is um really a a sex pay  
15:45  
act  
15:46  
and what it says is a couple of things

15:49  
first you can no longer ask applicants  
15:52  
in colorado what their past salary was  
15:56  
as a basis for their current salary the  
15:59  
reason for that is historically females  
16:02  
are paid less than males  
16:04  
so if you were in a job that  
16:05  
historically paid less then by asking  
16:08  
what your last salary was and then using  
16:10  
that as the basis for your new job is a  
16:12  
continuation of the problem  
16:15  
colorado actually went further than that  
16:18  
and now they require in colorado for you  
16:21  
to actually post on your job postings  
16:25  
a range or a salary that will be paid  
16:29  
as part of your job posting  
16:32  
this became problematic when remote work  
16:35  
started because what if the job is  
16:37  
remote  
16:38  
and you may or may not have someone from  
16:41  
colorado that could apply did you have  
16:43  
to comply with this colorado equal pay  
16:46  
for equal work act

16:48  
initially that answer appeared to be no  
16:51  
as long as you put in your posting that  
16:52  
you were not going to take applicants  
16:54  
for colorado but in the last six months  
16:57  
colorado has actually come out and said  
16:59  
that that is not correct that they will  
17:02  
uh  
17:03  
apply this law to anyone that takes any  
17:06  
applicant from colorado and that you  
17:08  
cannot use this law is a reason why you  
17:11  
would not take applicants from colorado  
17:14  
so if you are posting for remote work  
17:16  
hyper technically the colorado law would  
17:19  
apply to any uh remote posting that is  
17:22  
out there uh they are starting to  
17:24  
enforce that and more importantly what  
17:26  
we're seeing is there is actually a new  
17:29  
group of plaintiffs lawyers in colorado  
17:31  
who are actually using an ai bot to  
17:34  
search for postings for remote work to  
17:38  
actually bring these lawsuits against  
17:40  
employers all over the country

17:42  
based on this colorado law  
17:45  
and again they have a bot that they're  
17:46  
running through linkedin postings and  
17:48  
indeed postings and different online  
17:50  
postings to actually see if they can  
17:52  
find someone violating this colorado law  
17:54  
and then they're bringing a slew of  
17:56  
actions in colorado so it's an  
17:58  
interesting little nuance to to watch  
18:00  
out for and certainly know about this if  
18:02  
you are actually in colorado uh this law  
18:05  
went into effect in january and uh it  
18:08  
has been a game changer out in colorado  
18:11  
colorado had a lot of changes to their  
18:12  
employment laws  
18:14  
this year they are not the only ones in  
18:17  
this bucket we also have other states  
18:20  
that have salary history limitations  
18:23  
you'll see these states in red they all  
18:25  
have some limits to private employers  
18:28  
inquiring into or screening applicants  
18:31  
on the basis of compensation history

18:34  
so again this is not new and it is  
18:37  
something that is spreading across the  
18:39  
country we see more of these salary  
18:41  
history limitations  
18:43  
impending legislation across the country  
18:45  
in various states none of the others  
18:47  
seem to have a lot of traction at the  
18:49  
moment  
18:50  
but that's primarily because  
18:52  
legislatures are still so strongly  
18:54  
dealing with coven 19 but we do expect  
18:57  
this to pick back up once the pandemic  
19:00  
wanes a little more than it is now  
19:04  
anna just checking any questions thus  
19:06  
far  
19:08  
no question so far  
19:10  
all right so we're going to move on kind  
19:13  
of from hiring issues and initial  
19:15  
employment issues to one of the other  
19:17  
big changes we've seen since the biden  
19:19  
administration took over  
19:21  
and that is unionization so there's a

19:24  
real push to for pro union under the  
19:28  
biden administration um you'll see the  
19:31  
gentleman in the back right behind nancy  
19:33  
pelosi with the mustache he is the  
19:35  
former head of the largest union he  
19:37  
actually passed away just a few weeks  
19:40  
ago and his replacement was just  
19:42  
selected this week  
19:43  
um but we are seeing a strong push from  
19:46  
unions for unionization this was  
19:49  
underway because of again the biden  
19:51  
administration is very pro-union  
19:53  
but also the unions are really using the  
19:55  
coven 19 pandemic to their advantage and  
19:59  
are really pushing several different  
20:02  
pro-union activities based on health and  
20:05  
safety and other uh concerns  
20:08  
we're seeing the targets of unionization  
20:11  
being  
20:13  
an attack on arbitration agreements  
20:16  
we're seeing an attack on handbook rules  
20:19  
we're seeing a huge attack on joint

20:22  
employer status but unionization's like  
20:25  
for there to be joint employer they like  
20:26  
it easier to be joint employers so they  
20:28  
can increase the pool of folks that they  
20:31  
would unionize  
20:32  
the new board with the nlrp has already  
20:36  
made clear they're also going to attack  
20:38  
things like can an employer use your own  
20:41  
email system to advance unionization in  
20:44  
a campaign and the board is again very  
20:46  
heavily leaning towards unionization  
20:49  
one of the big things to watch in  
20:51  
congress right now it is part of the  
20:55  
the second round of the  
20:58  
the bill that's up now  
21:00  
of course what's up now is the  
21:01  
infrastructure act but there is a second  
21:03  
piece that's coming right behind it that  
21:05  
has to do more with families in the  
21:08  
people part of what the binding  
21:10  
administration calls infrastructure and  
21:13  
a big part of that is called the pro act



21:16

it is it is a big piece of legislation

21:19

that is being very much fault by most

21:22

employers um the pro act essentially

21:25

erases right to work states it

21:27

eliminates right to work and basically

21:30

gives everyone a right to unionize

21:32

instead of a right to be free of unions

21:35

and some

21:36

pro-employer groups have said the

21:38

pro-act

21:39

is a compilation of every pro-union idea

21:43

that's ever been put forth in the last

21:45

20 years all in one giant bill it is

21:48

basically everything the unions have

21:50

wanted um ever in federal legislation

21:54

and it is part of this overwhelming

21:56

package that they're going to try and

21:58

push through in the reconciliation

22:00

process

22:01

and again it's called the pro act and it

22:03

will have deep and long lasting impacts

22:07

on unionization and on the employer

22:09  
employee relationship  
22:11  
in this country if it does pass so  
22:13  
definitely stay aware of that as we're  
22:17  
seeing things go through  
22:19  
again one of the big pictures we're  
22:21  
seeing is unions trying to make advances  
22:24  
based on health and safety especially  
22:26  
during covid they're using that as a way  
22:28  
in if you're in a non-unionized  
22:31  
environment and you're not very familiar  
22:33  
with unions and you do have any kind of  
22:36  
union activity  
22:38  
please make sure you contact legal  
22:40  
counsel immediately there are very  
22:42  
special and unique rules to unionization  
22:45  
who can talk to the employees what you  
22:47  
can say what you can't say  
22:49  
um and one of the things that always  
22:50  
surprises non-unionized employers is  
22:54  
that a employee can make a claim for an  
22:57  
unfair labor practice before the  
22:59  
national labor relations board even if

23:02  
your company is not unionized we have  
23:05  
seen a huge increase in those in the  
23:07  
last two years again  
23:09  
based on health and safety in covid  
23:12  
protocols  
23:13  
we're also seeing that with mandatory  
23:15  
vaccinations and whether or not you can  
23:17  
have mandatory vaccinations that's  
23:19  
becoming a unionization issue as well  
23:22  
so unions are really gaining traction  
23:25  
currently and are expected to continue  
23:28  
as long as the democrats hold all three  
23:31  
um houses in congress the senate the  
23:33  
house and the white house  
23:37  
one of our other major issues that we  
23:39  
have seen  
23:41  
in the last uh two years is mental  
23:44  
health  
23:45  
when we look at the most recent  
23:47  
statistics that we have out there 49 of  
23:51  
employees report having less energy from  
23:53  
non-work activities

23:55  
42 percent less interested in  
23:57  
socializing 42 percent trouble sleeping  
24:01  
and 33 percent more alcohol or substance  
24:04  
abuse than usual  
24:07  
again that last statistic is very  
24:09  
interesting  
24:10  
when you consider the change in  
24:13  
marijuana laws across the country and  
24:15  
this pandemic hitting all at the same  
24:17  
time  
24:18  
when we look at what business leaders  
24:20  
say 44 say they have seen a decrease  
24:24  
in employee morale since the pandemic  
24:26  
began and i think all of us in hr are  
24:30  
very aware  
24:31  
that to just put it bluntly  
24:34  
everybody's burning out right people  
24:36  
with school-age children are burning out  
24:38  
i have three children  
24:41  
starting the school year felt  
24:42  
overwhelming to me this year with covid  
24:45  
with everything going on and it was like

24:47

nobody had a break to get ready for it

24:49

with everything that has been happening

24:51

the last 18 months

24:53

we're seeing employees who have been

24:55

very sick themselves who are dealing

24:57

with long-term covert issues who have

25:00

lost family members

25:02

i'm from a little small town and three

25:04

of my high school friends lost parents

25:06

this past weekend

25:07

all of this is having a serious and

25:09

impactful

25:11

impact on mental health and while mental

25:14

health is a big issue

25:17

it is really flooding into the workplace

25:19

now in a way that we have never seen

25:21

before

25:22

so when we talk about mental health

25:24

really one of the most important things

25:26

we can do is talk about what employers

25:30

are doing about this and how they are

25:32

reaching out to assist their employees

25:36

some of the big things again do have to

25:38

do with child care because of the crush

25:40

that has had on working parents the last

25:42

year so it is making it allowable to use

25:46

sick days if employees children's

25:48

schools are closed or just for child

25:51

care needs allowing more flexibility

25:53

with work hours if that's possible in

25:55

your industry

25:57

again maybe starting earlier so you can

25:59

actually pick up the kids from school if

26:01

there's no more after school or you know

26:03

working different flexible hours for

26:05

your employees it doesn't mean less

26:07

hours it doesn't mean different hours it

26:10

just means flexible hours so they can

26:12

work maybe a different schedule without

26:14

any kind of reduction in pay

26:17

we're also really seeing an increase in

26:19

employers planting for mental health

26:21

benefits

26:22

i will say and i'm going to talk about

26:24  
this with with vaccine mandates also but  
26:27  
for many of you you're beginning to or  
26:29  
or are already considering your health  
26:32  
plans for 2022  
26:34  
with enrollment starting in the fall we  
26:36  
are seeing across the nation a very  
26:38  
large increase in the mental health  
26:41  
benefits that are being offered by  
26:43  
employees through those plans  
26:45  
that is something you may want to look  
26:47  
at for your employees and thinking about  
26:50  
the mental health benefits that you  
26:51  
offer  
26:52  
it is also for hr to help remind your  
26:55  
employees about the eap benefits that  
26:57  
you probably already have out there  
27:00  
again many of you have these programs  
27:02  
but your employees may not have ever  
27:04  
needed them before or really know what  
27:06  
they are so it's it's reminding your  
27:08  
folks about those benefits um have been  
27:10  
a real big thing and then this last

27:12

bullet point may surprise you which is

27:14

don't forget about the pets i actually

27:17

was interviewed by sherm for an article

27:19

yesterday

27:21

where one of the big issues that

27:22

employers are having to face around the

27:24

country has to do with people's pets

27:27

so many people got covered puppies and

27:29

coveted kittens

27:31

that what we're seeing is that there is

27:33

a shortage of vets right now and so if

27:35

someone has to take their dog or cat to

27:38

a vet appointment it is taking hours all

27:41

day

27:42

some places are having um you know six

27:45

seven hour waits for an emergency vet

27:47

appointment uh and vets are you know

27:49

parts of people's family so if somebody

27:52

tells you they were at the vet

27:53

appointment and it took them eight hours

27:55

to get home they're not trying to get

27:57

one over on you it's really becoming a



27:59  
problem for people to take care of their  
28:01  
pets and again pets do  
28:04  
help with mental health issues which is  
28:05  
why i put this random bullet on this  
28:07  
slide because it's a real issue that  
28:10  
employers are starting to face today  
28:14  
all right  
28:16  
next topic that we're seeing across the  
28:18  
country is a top issue  
28:20  
non-competition non-solicitation  
28:23  
agreements  
28:24  
many of you have these agreements they  
28:26  
are under attack  
28:28  
both from the federal government from  
28:31  
the unions and from state legislatures  
28:33  
across the country  
28:35  
just this week we've seen illinois come  
28:37  
in with new non-competition  
28:40  
non-solicitation rules  
28:42  
in what we're seeing in illinois and  
28:44  
their recent update is what we're really  
28:46  
seeing across the country so even in

28:48  
pro-employer areas of the country where  
28:52  
non-competition clauses are enforced  
28:54  
we're seeing a trend  
28:56  
where they are now being limited and i  
29:00  
encourage you to re-evaluate your  
29:02  
non-compete and non-solicit agreements  
29:05  
so what we're really seeing legislatures  
29:07  
and the courts do  
29:08  
is look at the employee more  
29:11  
specifically in saying is this a high  
29:14  
level employee or is this a low-level  
29:16  
employee  
29:17  
if it's a low-level employee  
29:20  
who either is a low-salary employee  
29:22  
or low-level in terms of seniority  
29:25  
stature and the company they're really  
29:27  
evaluating whether the non-compete is  
29:29  
necessary to protect the business  
29:31  
interest of the company and if that  
29:34  
answer is no then they're being very  
29:36  
harsh if not invalidating these  
29:38  
agreements across the board that is very

29:40  
consistent with what president biden has  
29:43  
put forth  
29:44  
and is in some pending legislation now  
29:46  
in congress which again would limit  
29:50  
non-competes to where you had to earn a  
29:52  
certain dollar amount to be subject to a  
29:54  
non-compete  
29:55  
we're also seeing lots of things about  
29:57  
consideration and at will employment  
30:00  
in different areas of the country  
30:02  
before in most places if you had someone  
30:05  
sign a non-competition non-solicit  
30:07  
agreement before they were hired that  
30:10  
was sufficient consideration  
30:12  
now that is being challenged if the  
30:14  
person is at will and they're at a lower  
30:17  
rate again low-level employees where  
30:19  
they're leaving is not really going to  
30:21  
hurt the business  
30:23  
so if you do have these agreements i  
30:25  
very much encourage you to reevaluate  
30:28  
them based on the state where the person

30:30  
is living  
30:31  
to see if they're still enforceable or  
30:33  
if there's a way for you to  
30:36  
tailor them  
30:38  
to continue to keep them enforceable  
30:41  
another issue is if you are someone who  
30:44  
truly has confidential information you  
30:47  
may want to have that part of the  
30:49  
agreement in a separate and independent  
30:52  
document  
30:53  
previously we've always put these three  
30:56  
categories together non-competition  
30:58  
non-solicitation of employees and  
31:00  
confidential information in one document  
31:03  
we thought that made it more enforceable  
31:06  
that is now changing if you have highly  
31:08  
confidential information because the  
31:11  
non-com competition agreements are being  
31:14  
challenged so heavily  
31:15  
you may want to have your  
31:16  
confidentiality non-disclosure agreement  
31:19  
separate now

31:20  
such that if you do have a  
31:23  
non-competition agreement  
31:26  
be deemed unenforceable you do not also  
31:29  
lose your confidentiality provisions  
31:32  
this is of course becoming a bigger  
31:33  
issue for hr people across the country  
31:38  
all right  
31:39  
my next in our top topics for hr folks  
31:43  
today  
31:44  
not surprising diversity and inclusion  
31:47  
of course in 2019 2020 we saw  
31:50  
um a lot of strife across the country  
31:53  
based on  
31:55  
racial divides that is continuing  
31:58  
um we are seeing diversity inclusion  
32:01  
becoming a bigger and bigger issue  
32:05  
with companies of all sizes  
32:07  
in all industries  
32:10  
we are also seeing a really interesting  
32:13  
change with shareholders so with our  
32:16  
publicly traded companies diversity and  
32:18  
inclusion is actually becoming something

32:20  
that is being publicly reported  
32:23  
and demanded by shareholders  
32:25  
it's again as it goes into that realm it  
32:28  
just trickles down to smaller employers  
32:31  
so diverging inclusion looking at  
32:34  
um at different ways to make diversity  
32:38  
and inclusion  
32:40  
better within your companies so one of  
32:43  
the ways you can do that is really  
32:45  
looking at your hiring your hiring does  
32:47  
not matter whether you're working at  
32:49  
home  
32:50  
or whether you're working remote we did  
32:53  
get a question about how you can make  
32:55  
programs more prevalent when you're  
32:57  
still working for home  
32:58  
and i think when we're talking about  
33:00  
people that are working remote and from  
33:01  
home one of the best things we can do is  
33:04  
use our technology  
33:05  
you can still have a  
33:09  
business resource groups have sessions

33:12  
for for those folks that are with zoom  
33:15  
that allow for there to still be some  
33:17  
congeniality you know maybe that's for  
33:19  
working parents maybe it's for your  
33:21  
african-american group maybe it's for  
33:22  
your uh your veterans for your different  
33:25  
business resource groups you know it's  
33:28  
better when we're in person and we're  
33:29  
face-to-face but we do not have  
33:30  
technology to still work that in  
33:33  
also one of the big things we see with  
33:35  
remote employees with diversity and  
33:36  
inclusion  
33:38  
has to do with training your management  
33:41  
to make sure  
33:44  
your management knows how to  
33:48  
include everyone when they're working in  
33:50  
remote meetings it is often the same  
33:52  
person who likes to talk up in a remote  
33:55  
meeting that wants to talk up  
33:58  
in person right that person is always  
34:00  
raising their hands and always talking

34:02  
out loud you want to make sure your  
34:04  
management is calling on everyone in  
34:06  
your remote meetings as well  
34:08  
and that you don't have people who are  
34:10  
more introverted disappear  
34:13  
into  
34:14  
the remote work environment that they're  
34:16  
still called on that you're engaging  
34:18  
with them but really just reaching out  
34:20  
to them through the through the  
34:21  
technology tools is the best thing that  
34:23  
you can do because you do want to keep  
34:26  
people engaged  
34:27  
i will also say that working from home  
34:31  
is one way in remote work is one way  
34:33  
that you can actually increase diversity  
34:36  
and inclusion because it can help you  
34:38  
increase your applicant pool if you can  
34:40  
have people from further away from your  
34:42  
home  
34:43  
workplace  
34:44  
be included in your applicant pool it



34:46  
allows your applicant pool to be bigger  
34:48  
which is generally how you practically  
34:51  
speaking increase diversity and  
34:53  
inclusion in your workforce when you  
34:55  
have a larger hiring pool you get more  
34:57  
diverse applicants so that is actually a  
35:00  
good thing about remote work and coven  
35:02  
19 as far as diversity and inclusion  
35:05  
is um  
35:06  
is concerned  
35:11  
all right  
35:12  
our next topic i'm going to switch a  
35:14  
little bit into coved  
35:16  
in some ways i know that we are all sick  
35:18  
of hearing about coveted hr but it is  
35:20  
not going away anytime soon and we do  
35:23  
have some really important new issues  
35:25  
that are key to keeping it top of mind  
35:28  
for our hr community  
35:31  
so the first thing i thought i would do  
35:33  
is give you guys a little breakdown on  
35:35  
what coven 19 litigation looks like

35:39  
so roughly speaking  
35:41  
there have been almost 4 000 cases filed  
35:45  
in federal court related to coven 19.  
35:49  
this map is a couple of weeks old now  
35:52  
but it gives you a good idea of where  
35:54  
you see lawsuits being filed so where  
35:57  
you see lawsuits the most lawsuits being  
36:00  
filed  
36:01  
are in either those places  
36:04  
that close down the hardest like  
36:07  
california  
36:08  
or where we've seen the highest number  
36:12  
of coven 19 cases  
36:14  
texas florida the northeast  
36:17  
or where we've seen states have the  
36:20  
least amount of  
36:22  
restrictions based on covet  
36:24  
19. in some ways that makes a lot of  
36:27  
sense because if you had  
36:29  
the least amount of restrictions  
36:30  
employees panic that you weren't having  
36:32  
enough coveted protocols in the places

36:35  
that were most restricted you have  
36:37  
employees that were panicking and filing  
36:39  
lawsuits because your protocols were too  
36:41  
restricted so it went one way or the  
36:44  
other as far as coven 19 lawsuits have  
36:47  
been found  
36:48  
generally we see about 300 lawsuits  
36:51  
being filed a week related to coven 19  
36:54  
so these cases are only increasing  
36:58  
when you look at the cases  
37:00  
you can see them by industry also  
37:03  
this is a little deceptive because the  
37:06  
health care industry is so high  
37:08  
what i will say about this is the health  
37:10  
care cases were the cases that were  
37:12  
filed originally because they stayed  
37:14  
open and of course were in the in the in  
37:17  
the heart of coven 19 battle from the  
37:20  
very beginning we are now seeing the  
37:22  
other industries actually catch up  
37:25  
to the coven 19 numbers  
37:28  
if you're interested in diving into this

37:30

we actually have this form on our

37:32

ogletree website that's publicly

37:34

available you can go to this map and all

37:36

of these states you can click on it it

37:38

will tell you exactly what the claims

37:40

are in your state it can give you this

37:42

industry breakdown industry by types of

37:46

lawsuits so you can really see what's

37:47

going on in your industry but when we're

37:50

talking about the types of claims that

37:52

have been filed

37:54

across the country what you will really

37:57

see is that they have primarily to do

37:59

with health and safety

38:01

employees really wanting to make sure

38:03

you are

38:04

properly enforcing the cdc guidelines

38:07

for health and safety

38:09

and or they are discrimination suits or

38:12

retaliation suits

38:14

related to

38:16

what's happening so a lot of these are

38:18  
your typical labor and employment claims  
38:20  
that have a coveted overlay to them so  
38:22  
it will be things like  
38:24  
i got fired  
38:26  
because i made a complaint  
38:28  
that  
38:30  
and xyz coworker  
38:33  
came to work positive came to work and  
38:35  
didn't wear a mask in violation of our  
38:37  
protocols did something in violation of  
38:39  
your health and safety protocols  
38:42  
not that they missed work for the tip  
38:44  
time not that they were tardy in  
38:46  
violation of your policies so it is  
38:49  
almost another reason why they've made a  
38:52  
complaint that then gives them that  
38:53  
retaliation claim  
38:55  
that is the primary claim that we're  
38:57  
seeing  
38:58  
we're also seeing claims uh really  
39:00  
increase based on the ada  
39:04  
either you're not giving someone an

39:05  
appropriate accommodation or you're not  
39:07  
protecting them enough  
39:09  
based on the accommodation that they  
39:11  
need so they are the typical lawsuits  
39:14  
that we've seen but with a different  
39:15  
overlay for coven 19.  
39:18  
and again if you want to go back and  
39:19  
look at this this slide deck that i know  
39:21  
anna's going to give you guys later this  
39:23  
chart just kind of gives you a breakdown  
39:25  
of the types of claims that we see  
39:28  
versus the industry so that you can  
39:30  
really see what is specifically  
39:33  
typical for your industry  
39:36  
again with covid the big issues we're  
39:38  
seeing are compliance  
39:41  
again it's really making sure you're  
39:43  
staying up to date on the continually  
39:46  
changing guidelines on social distancing  
39:49  
on maskings on screenings on what to do  
39:53  
if folks test  
39:54  
positive on your paid leave requirements

39:57  
in your different states for covered 19  
40:00  
or for any paid leave in really staying  
40:03  
in compliance with those issues  
40:05  
with the delta variant we are once again  
40:08  
seeing the rules change and you really  
40:10  
as an hr manager have to stay on top of  
40:12  
that i encourage you all if you are not  
40:15  
currently doing it to follow the cdc and  
40:18  
your local state  
40:20  
health agency on twitter oftentimes  
40:23  
that's where you can get the fastest  
40:25  
news i also suggest you follow your  
40:27  
governor's on twitter  
40:29  
uh just this week we saw that governor  
40:31  
abbott tweeted out some things in texas  
40:34  
and twitter was how that  
40:36  
information was released first same  
40:38  
thing with the cdc they are always  
40:40  
releasing their most up-to-date guidance  
40:42  
on twitter um of course it's on their  
40:44  
website but with twitter it's something  
40:46  
alerting you versus you having to go

40:48  
find it  
40:49  
we're seeing different changes happening  
40:51  
again because of the delta variant  
40:54  
i'm in south carolina just last night  
40:57  
our health agency here once again  
40:59  
changed our social distancing and  
41:02  
masking requirements for children in our  
41:04  
schools so it is changing again because  
41:07  
of delta variant very quickly and again  
41:09  
under osha you have a duty to keep your  
41:12  
employees safe and following the cdc and  
41:14  
local health guidelines is the best way  
41:17  
that you can protect your company from  
41:19  
any kind of complaint that comes in  
41:22  
due to those guidelines if you do make a  
41:24  
change in your company's procedure or  
41:26  
policy based on a new guideline that  
41:29  
comes out i strongly encourage you to  
41:32  
date the guidance that you're following  
41:34  
and put that guidance in a file  
41:36  
one thing that we've seen in defending  
41:38  
these cases that has been a complicating



41:40

factor is our clients will say oh we

41:43

changed that role because new guidance

41:44

had come out but they can't remember the

41:46

date of the guidance which guidance it

41:48

was and so we're having to put together

41:49

the pieces so keeping up with what

41:51

guidance you're following and when is

41:53

really critical to the defense of any

41:55

case that you may have to have

41:57

regarding covet 19.

42:00

and now i'm going to talk about what is

42:02

probably the top topic of the day

42:05

which is mandatory vaccinations um we

42:08

are seeing more and more companies

42:10

decide to go with mandatory vaccinate

42:13

vaccines or voluntary vaccines with some

42:16

kind of um carrot or enhanced benefit

42:19

that you can give to those folks

42:21

so when we talk about voluntary vaccines

42:24

with an enhanced benefit they're very

42:26

common right now the only real um legal

42:30

loophole you need to wear of and watch

42:32  
out for is make sure whatever benefit  
42:35  
that you're giving for your employees  
42:37  
getting vaccinated whether it be  
42:39  
days off or some kind of monetary  
42:42  
benefit is that you know how to tax that  
42:44  
benefit whether or not it would count as  
42:46  
some kind of wage benefit or whether  
42:49  
it's an additional benefit for which you  
42:51  
will have to give them a 10.99 for taxes  
42:53  
at the end of the year  
42:56  
we're also seeing some employers  
42:58  
decide to go with what i'm going to call  
43:00  
the stick um for most of you i'm sure  
43:03  
you heard that there's a major airline  
43:05  
carrier that decided yesterday to put an  
43:08  
additional um  
43:10  
monetary dollar amount for any employee  
43:12  
who is not vaccinated and who is in  
43:15  
their health care um that airline  
43:17  
carrier is going to charge 200 a month  
43:19  
in addition for any unvaccinated  
43:22  
employee on their health care plan

43:24

um if any of you would like to consider

43:27

that you do need to make sure that your

43:30

policy that you're under your health

43:31

care plan allows it um whether or not it

43:34

does depends on whether or not you are

43:36

self-funded health care or whether or

43:38

not you're in a broader plan even

43:40

broader plans allow it but this is all

43:42

under a wellness group of rules and it

43:46

is just like a smoking

43:48

addition to any kind of

43:51

health care insurance that you may have

43:53

it's the same thing but what you need to

43:55

be aware of is that all of those

43:57

wellness plans that have those kinds of

43:59

uh penalties for health care programs

44:02

there is a maximum penalty that you can

44:04

charge to any employee for the plan not

44:07

for the issue

44:08

so if you're in a plan and you'd like to

44:10

add that kind of maybe stick to

44:12

encourage people to get vaccinated

44:14  
and you also have a penalty or an  
44:16  
additional cost if they're a smoker the  
44:19  
two together could only be so much and  
44:21  
that's a plan issue so you need to make  
44:23  
sure someone who does erisa plans  
44:26  
is able to look at your plan to make  
44:28  
sure you will be in compliance if you  
44:31  
decide to go with the stick approach to  
44:33  
getting folks vaccinated  
44:35  
of course there's no requirement that  
44:37  
you make your employees get vaccinated  
44:38  
and some employers are not going to go  
44:41  
that route at all they're going to  
44:42  
encourage it or not encourage it or just  
44:44  
stay silent  
44:45  
we are seeing many employers who go to  
44:49  
party job sites though having an issue  
44:51  
where it's the third party who is  
44:53  
requiring anyone onto their property be  
44:56  
vaccinated  
44:57  
if you're in that situation one kind of  
45:00  
legal issue you need to think about and

45:02  
be aware of  
45:03  
if the third party is requiring you to  
45:06  
provide confirmation of an individual's  
45:09  
vaccine status so they want you to give  
45:12  
a copy of ashley's cut nose vaccination  
45:14  
card  
45:15  
that could be a problem as far as  
45:17  
violation of the ada privacy rules  
45:20  
it is nuanced but the way to handle that  
45:23  
is to talk to your third party and come  
45:25  
up with an agreement that you the the  
45:27  
first employer will confirm vaccination  
45:31  
status but not actually give them a copy  
45:34  
of the vaccination cards or a list of  
45:36  
your employees who are vaccinated it's  
45:38  
nuanced but it's important for privacy  
45:40  
concerns under the ada  
45:43  
also  
45:44  
if you are collecting vaccine  
45:46  
information on your employees it is  
45:48  
important to recognize that that is the  
45:50  
equivalent of a medical record and it

45:52  
has to be kept as confidential as  
45:55  
possible  
45:56  
for you to be able to um run the  
45:59  
workforce so really your hr people  
46:01  
should know but not not anyone other  
46:03  
than that just like you would do for  
46:05  
osha medical records or workers comp  
46:07  
medical records those types of medical  
46:10  
records  
46:11  
um as far as mandatory vaccinations are  
46:16  
concerned if there has been a tipping  
46:18  
point in the scale  
46:20  
we had a subset of employers who were  
46:24  
mandating mandating vaccinations  
46:27  
eight weeks ago  
46:28  
then we saw the tide really shift when  
46:31  
we have seen now a mandate for health  
46:34  
care organizations i'm in oregon we're  
46:37  
seeing  
46:38  
many many health care organizations  
46:39  
across the country now mandate vaccines  
46:43  
then of course we had the federal

46:44

government say they're going to mandate

46:46

it for va employees and for a military

46:49

and then just as last week when pfizer

46:51

got their full approval for the vaccine

46:54

we are now seeing an overwhelming number

46:56

of employers consider going to mandatory

46:59

vaccinations uh it is definitely what

47:01

i'm going to call the current wave is to

47:04

actually switch over to mandatory

47:06

vaccines

47:07

if you're going to have a mandatory

47:09

vaccine program it is critical that you

47:11

understand the two exceptions to

47:14

mandatory vaccinations that you must

47:16

abide by

47:17

so under the ada of course there are

47:20

some people who for medical reasons

47:22

cannot get vaccinated

47:24

if you have someone who asks for an ada

47:27

accommodation for a mandatory vaccine

47:30

you should do that in the same manner

47:33

that you would any other ada request

47:36

which is give them your ada form have

47:38

them go to their doctor the doctor

47:40

determines whether or not they need an

47:42

exemption from the mandatory vaccine

47:45

policy just like from any other work

47:48

rule under the ada and then you as an

47:50

employer must determine whether or not

47:52

you can make that accommodation

47:54

now a minute ago we were talking about

47:57

third parties that your employees may go

47:59

to third party work sites where the

48:01

third party is mandating the vaccination

48:04

if you have someone who has an ada issue

48:07

please remember that that is an

48:08

individual assessment so if the third

48:11

party is requiring mandatory

48:13

vaccinations your employee would go to

48:15

that work site they cannot get

48:17

vaccinated because of an ada reason

48:19

in a perfect world you will be asking

48:21

that third party

48:23

if they will make an accommodation for



48:25

your employee the reason for that is

48:27

because it is again an individual

48:29

evaluation so one global no we're not

48:32

letting anybody in

48:33

doesn't really

48:36

hit the individual evaluation maybe they

48:38

would for this employee maybe they

48:39

wouldn't but having that in your file

48:41

can be important when you're looking at

48:43

your individual assessment of the ada

48:46

and whether or not you can accommodate

48:48

that employee

48:50

the other big caveat to mandatory

48:52

vaccination has to do with a religious

48:55

exemption

48:56

this is where we're really seeing the

48:58

big fight with mandatory vaccinations

49:00

come up

49:01

in many of our health care situations

49:04

we're seeing large hospital systems have

49:06

hundreds of religious exemptions being

49:09

filed

49:10  
what we see is that the exemptions are  
49:13  
all over the board and again you need to  
49:15  
have a process in a plan in place if  
49:18  
you're going to go to mandatory  
49:19  
vaccinations for how you're going to  
49:21  
process an evaluation religious  
49:23  
exemption request  
49:25  
when we're talking about religious  
49:26  
exemption requests  
49:29  
one of the things that employers are  
49:30  
doing  
49:31  
is they're asking the reason for the  
49:33  
religious exemption they're asking for  
49:36  
the religious group the preacher the  
49:39  
pastor to actually sign off that this is  
49:42  
a part of  
49:43  
the religious doctrines culture  
49:46  
that it is truly a part of the belief  
49:49  
system of the organization  
49:52  
that they get an exemption for this  
49:54  
reason  
49:55  
of course the number one exemption has

49:58  
to do with the belief that there are um  
50:02  
tissues are used from  
50:04  
abortions that have been used to create  
50:06  
the vaccines  
50:08  
there is some truth to that but it's not  
50:10  
in the way most people understand  
50:12  
in the 1950s fetal cells were used to  
50:16  
create the base of vaccines  
50:18  
that base is still what all vaccines are  
50:21  
created from today  
50:23  
but anyone who has ever gotten any  
50:25  
vaccine has probably  
50:27  
had that same issue before so one  
50:29  
question would be if you didn't object  
50:31  
to it when you did a tetanus shot then  
50:33  
why are you objecting to it now and  
50:36  
really challenging that versus making an  
50:38  
across-the-board exemption  
50:40  
for  
50:41  
for um for that reason and really  
50:43  
challenging  
50:45  
why they believe it is a religious

50:47  
objection because again a political  
50:49  
objection  
50:53  
while an individual can raise that  
50:56  
legally speaking it does not get them  
50:59  
out of the mandatory vaccination it must  
51:01  
be a religious objection to get them out  
51:04  
of a mandatory vaccination policy if  
51:06  
that is the way your company decides to  
51:09  
go  
51:10  
i will say this is going to be my only  
51:12  
sales pitch to you guys for the day if  
51:14  
you are talking about voluntary or  
51:17  
um mandatory vaccinations we do have a  
51:20  
toolkit here at ogletree that gives you  
51:22  
the policy that you should use these  
51:25  
request forms that we're talking about  
51:28  
an outline for how to conduct these  
51:31  
interactive processes that you need to  
51:33  
do  
51:34  
for both mandatory and for voluntary  
51:36  
policies and we have a special set if  
51:39  
you are in california or if you have

51:41  
california employees because their rules  
51:43  
are a little different if you're  
51:45  
interested in any of these again it  
51:47  
gives you all of the forms and policies  
51:49  
that you need  
51:50  
shoot me an email and i'll be glad to  
51:52  
talk to you about it more but this has  
51:54  
been a very valuable resource and  
51:56  
toolkit that we designed that would be  
51:58  
applicable to all employers in all  
52:00  
industries  
52:02  
the only exception would be if you're an  
52:03  
employer who is in healthcare in oregon  
52:06  
they do have a special set of forms for  
52:09  
that that we also have ready for anyone  
52:12  
that may need them  
52:15  
the other big part of covet 19 and it's  
52:18  
bigger than kovid 19 but is part of  
52:20  
covet 19 has to do with your paid lead  
52:23  
um one thing i wanted to make sure  
52:25  
everyone was remembering the ffor cra  
52:29  
the family first corona virus recovery

52:31

act y'all remember it was paid it

52:34

mandated paid leave

52:36

last year

52:37

if you were a small employer with under

52:39

500 employees this year in 2021 it

52:42

became voluntary

52:44

it covered folks who were out for child

52:46

care for sick employees for vaccines for

52:49

sickness due to vaccines gives paid

52:52

leave for those reasons but it expires

52:55

on september 30th so if you are

52:56

currently taking advantage of this

52:58

program

52:59

be aware the expiration date is coming

53:02

if you are not currently taking part of

53:05

this program but you're getting ready to

53:08

mandate vaccines know that this may give

53:10

you some tax credit for some paid leave

53:13

after um for people to go and get

53:15

vaccines it covers time off from work it

53:17

covers if you're sick the next day but

53:19

again it expires on september 30th and

53:22  
again currently there has been no talk  
53:24  
about extending this deadline  
53:27  
also please don't forget with coven 19  
53:30  
and the delta variant ticking up your  
53:32  
different state and local paid sick  
53:34  
leave laws um this is the the state  
53:37  
level not the municipal level but again  
53:39  
if you're in any of these states please  
53:41  
make sure you understand your paid sick  
53:43  
leave laws and your minimum amounts for  
53:46  
your paid sick leaves in these states so  
53:48  
that you can um  
53:51  
go ahead and make sure you're complying  
53:54  
with that  
53:59  
so we got a question that's talking  
54:00  
about liability waivers upon returning  
54:03  
for work and does that prevent an  
54:05  
employee from filing a complaint about a  
54:08  
safety or health issue so filing a  
54:10  
waiver never actually prevents any  
54:13  
employee from finding a complaint with a  
54:15  
health or safety issue a safety agency

54:18  
um there's no waiver that has ever  
54:21  
prevented you from filing a lawsuit what  
54:24  
it may do is prevent an individual from  
54:26  
being able to individually recover  
54:28  
from some kind of of issue that they  
54:32  
have but it would not prevent a report  
54:34  
to say an osha or a state-level osha  
54:37  
entity  
54:38  
if something was going on from that  
54:41  
that standpoint there are also multiple  
54:43  
rules um in different states with  
54:45  
different legislatures that had passed  
54:48  
different laws related to covid that  
54:50  
either protect the employers from  
54:52  
contracting covid on the workplace and  
54:55  
or clearly make it a workers  
54:56  
compensation injury um if you come back  
54:59  
to the workplace and you can track copen  
55:02  
the reality is it's incredibly different  
55:04  
to track covet unless there's been an  
55:05  
outbreak in the workplace but there are  
55:08  
different state laws regarding liability



55:11  
shield statutes or workers comp that do  
55:13  
address that issue but merely having  
55:15  
your employees sign a waiver does not  
55:17  
prevent them from reporting to any  
55:20  
agency that there's an issue it may  
55:22  
prevent them from recovering  
55:23  
individually but would not stop any  
55:25  
reporting and in fact they could not  
55:27  
stop you cannot as an employer stop an  
55:29  
employee from reporting a a issue that's  
55:32  
coming down the tracks  
55:35  
so lastly what i wanted to do is point  
55:38  
out a couple of things that i really  
55:39  
want you guys to watch out for um with  
55:42  
the biden administration that deeply  
55:44  
impacts employers in hr  
55:46  
again one is the joint employer issue  
55:48  
again the biden administration through  
55:50  
the national labor relations board  
55:52  
is clearly um working to attack joint  
55:55  
employer  
55:56  
not only is the national labor relations

55:58  
board doing this also the wage in our  
56:00  
division pulled some regulations that  
56:03  
the trump administration had pulled out  
56:06  
making it harder to prove joint employer  
56:08  
and we expect them to reissue new joint  
56:10  
employer guidelines that will make it  
56:12  
easier to show joint employer status and  
56:14  
there will be a new test for that that  
56:16  
all of you will need to be able to be  
56:18  
aware of  
56:19  
also again pending in congress are what  
56:22  
i'm going to call the people part of the  
56:24  
infrastructure bill  
56:26  
it is part of what is being debated in  
56:28  
congress now part of that is mandatory  
56:30  
paid family leave it also includes um  
56:34  
not allowing arbitration in certain  
56:36  
title vii cri situations especially  
56:40  
related to sex discrimination case  
56:42  
there's also a pregnancy worker fairness  
56:44  
act that has already passed the house  
56:46  
and is waiting for senate review

56:48

and again we also talked about the pro

56:51

act

56:51

which is again um basically unions gift

56:55

bag to everything they've ever wanted as

56:58

far as unionization

57:00

also is part of those larger plans that

57:02

are going through congress are mandatory

57:05

increases in minimum wage to the 15 an

57:07

hour all of those things are back up in

57:10

that next bill that's going to be going

57:12

through after this first infrastructure

57:14

act um gets gets passed or whatever they

57:18

decide to do with it but definitely

57:19

watch these issues in the next three to

57:22

six months to see what is happening with

57:23

them

57:25

all right we are close to the end of my

57:27

hour i know that was a lot again i tried

57:29

to target on what we at ogletree are

57:31

seeing is the most common issues that hr

57:34

is facing around the country

57:36

again here's my contact information i'd

57:38  
be glad to answer any additional  
57:40  
questions that you guys may have i don't  
57:43  
see any more in the chat box but let me  
57:46  
scroll back through  
57:48  
um  
57:49  
in the  
57:51  
the questions  
57:52  
i believe  
57:56  
that i've answered all of them one  
57:58  
question that we got was do i have a  
58:01  
right to not come to work if a co-worker  
58:03  
does not want to get vaccinated um that  
58:06  
answer would be no  
58:08  
uh it depends on your company's policy  
58:11  
as to vaccination uh what you do have  
58:15  
and your employer should be doing is  
58:16  
making sure they're following the health  
58:19  
and safety guidelines um if you're  
58:21  
unvaccinated there could be a policy  
58:23  
such as you have to wear a mask you have  
58:26  
to social distance differently you have  
58:28  
to do things differently than those that

58:30  
are vaccinated that is currently what  
58:32  
the cdc is suggesting  
58:34  
so currently the cdc guidelines are if  
58:36  
you are vaccinated you don't have to  
58:38  
social distance you don't have to wear  
58:40  
a mask  
58:42  
but if you're unvaccinated you do  
58:44  
now those rules are currently changing  
58:45  
with the delta variant so if the delta  
58:47  
variant is high in your area then those  
58:49  
rules are different so for example i'm  
58:52  
in south carolina we do have an  
58:53  
increasing amount of delta variant so  
58:56  
previously my workplace i am vaccinated  
58:59  
i did not have to wear a mask and i did  
59:00  
not have the social distance anymore now  
59:02  
the delta variants back in place that  
59:04  
rule has changed i now must mask and i  
59:06  
must um social distance again when i am  
59:10  
indoors in any kind of public space so  
59:12  
if i'm in my personal office with my  
59:14  
door closed i do not have to wear a mask

59:16  
of course but if i'm in a public space i  
59:18  
do again um also so for vaccinations if  
59:21  
you go to mandatory vaccinations again  
59:23  
you have to make sure that you have um  
59:26  
religious exemptions and that you have  
59:29  
uh ada exemptions where those are  
59:31  
applicable only if they're applicable  
59:33  
but if they're applicable you have to  
59:34  
follow those  
59:36  
and also what we're seeing commonly is  
59:38  
if employees don't want to get  
59:40  
vaccinated and they fall into those  
59:43  
exemptions then what we're seeing lots  
59:45  
of employers do is require mandatory  
59:47  
testing so it may be coveted vaccine  
59:49  
testing as often as once a week um right  
59:53  
now there's lots of free testing  
59:55  
ultimately if there was not free testing  
59:57  
in your area and you required it as an  
59:59  
employer you would have to pay for it i  
60:01  
mean you have to pay for any time that  
60:03  
it takes to go get tested for the

60:05

covid19

60:07

if you're mandating it is part of

60:09

employment those are other nuances that

60:12

we cover in that chart that we have but

60:14

again mandatory vaccination i think

60:16

we're going to see that far and above be

60:19

one of the biggest topics that we have

60:21

here in the next bit and we're seeing

60:23

more and more employers go to mandatory

60:26

vaccinations um i bet we're seeing 50 or

60:30

60 clients across our firm go towards

60:32

mandatory vaccinations every every day

60:35

or two at this point across our firm so

60:37

mandatory vaccinations are becoming um

60:40

more of the common than before where it

60:44

was not really common for it to be

60:46

mandated

60:47

now that we see pfizer getting the full

60:49

approval it's getting more attention and

60:52

i think we'll only see that number

60:53

increase um when the modernity drug also

60:56

gets its full um stamp of approval from

60:59

the fda which we're anticipating is

61:01

going to come in the next

61:04

week or two very quickly here down the

61:06

pike

61:07

all right anna i think i hit all of the

61:09

questions that