

Little Survey: Competitive Talent Market and Pandemic Uncertainty Complicate Return-to-Office Policies

Little, the world's largest employment and labor law practice representing management, has released the results of its 10th annual survey, completed by 1,275 in-house lawyers, C-suite executives and human resources professionals based across the United States.

As workers increasingly return to offices in the midst of a historically tight labor market – and after more than two years of a global pandemic – The Little® Annual Employer Survey, 2022 explores how employers are responding to a myriad of workplace issues and ever-changing regulations.

Employers Split on COVID-19 Vaccine Mandates

Though employers' approaches to vaccine mandates have evolved since last year – 41% of respondents now say they are mandating vaccination or requiring regular testing, compared to 21% in Little's August 2021 survey – the survey data suggests that most businesses' policies are set at this point in the pandemic. Only 1% are planning mandatory vaccination policies that haven't been implemented yet, and only 2% remain unsure of their plans. The largest share (56%) said they will not implement such a policy unless required by law.

Given today's tight labor market and ongoing polarization around the issue of vaccination, it's no surprise that top concerns regarding mandates centered around resistance from individuals opposed to vaccination and the potential loss of staff. But a breakdown of the findings suggests that some of these challenges could be more daunting in perception than in

reality. For instance, respondents whose organizations have vaccine mandates in place are less concerned about them leading to loss of staff (51% compared with 85% of those without mandates) and the difficulty of recruiting new staff (32% versus 65%).

Similarly, the perceived benefits of requiring vaccinations are more pronounced among those whose organizations have such policies in place. Sixty-eight percent of those with mandates believe that such policies can make employees feel safer and facilitate more in-person work (compared to 41% without mandates), and 57% feel they can help improve business continuity (compared to 46% without mandates).

A lack of regulatory clarity has also contributed to challenges in setting vaccine policies, most prominently in relation to the suspended Occupational Safety and Health Administration (OSHA) Emergency Temporary Standard (ETS) and the growing patchwork of state and local rules on vaccine mandates. Among respondents whose organizations have not adopted a mandatory vaccination policy, 69% said their plans stalled when OSHA's ETS and/or the federal contractor mandate were suspended by litigation.

"Employers broadly recognize the potential benefits of increasing COVID-19 vaccination, but the lack of a uniform public policy approach and concerns about competition for talent leave many businesses without an easy way to get there," said Devjani Mishra, a leader of Littler's COVID-19 Task Force and co-leader of the firm's Vaccination Working Group. "As more employees return to on-site work, employers must focus on understanding worker sentiment, monitoring vaccination rates in their workplace, considering the implications of evolving and divergent rules and regulations, and weighing the various costs associated with having (or not having) vaccination and testing policies in place."

An Uphill Battle: Reopening Offices Amid a Competitive Talent

Market

While employers were split on vaccine mandates, there was more alignment on plans for returning employees to in-person work. Nearly 70% of respondents said they had already instituted a formal return-to-office policy as of the end of March (54%) or would do so between April and August (13%).

It is clear, too, that employers recognize the importance of offering flexibility and remote work options in today's talent market. Nearly all respondents (97%) are already offering or considering expanding flexibility and remote work options to help attract and retain employees – with 47% doing so to a great extent.

“We are at a pivotal moment in the world of work. Employees have become comfortable with not coming into the office, and given the current labor market, they have substantial leverage in asserting their preferences,” said Barry Hartstein, co-leader of Littler's COVID-19 Vaccination Working Group and co-chair of the firm's EEO & Diversity Practice Group. “There's plenty of opportunity for employers to retain the benefits of both remote and in-person work, but they must be transparent and communicative with their employees – and approach the discussion with the knowledge that the workplace has irrevocably changed.”

Despite the broader acceptance of flexible work, 86% of respondents said maintaining company culture and employee engagement within a hybrid work model is an ongoing concern. Just over half were concerned about ensuring that remote/hybrid work flexibility is applied fairly to their employees (53%) and about the efficiency of communication and meetings that are a mix of remote and in-person staff (52%).

Workplace Regulation Expected to Impact Employer Operations

Just over a year into the Biden administration, employers identified several areas in which regulatory agencies and

employment-law-related changes are expected to impact their workplaces over the next 12 months.

More than 60% of respondents anticipate a moderate or significant impact on their businesses from enforcement efforts and compliance requirements associated with OSHA (76%), state and local agencies (73%), the Department of Labor (65%) and the Equal Employment Opportunity Commission (63%).

“New leadership at key federal agencies, combined with numerous different state and local agency agendas, will have a powerful impact on employers’ compliance functions, operations and their bottom lines,” said James A. Paretti, Jr., Littler shareholder and member of the firm’s Workplace Policy Institute.

Paid sick and family leave requirements topped the list of regulatory changes that employers are watching for the year ahead, with 73% expecting an impact on their businesses. The level of concern in this area is not surprising, given the changes spurred by the pandemic and the growing patchwork as states and localities continue to update their paid sick and family leave laws. Fifty-six percent of respondents said they expect changes to income equality measures (e.g., minimum wage increases, pay equity, pay transparency) to have an impact on their businesses.

“Employers are being hit from all sides with new employment law-related challenges,” said Michael Lotito, Littler shareholder and co-chair of the firm’s Workplace Policy Institute. “As the hot labor market and the Biden administration continue to empower employees, these issues will only intensify in the year to come – underscoring the importance of staying up to date on policy changes and getting ahead of new and emerging risks.”

Additional Key Findings

The survey data reveals several other areas where employers

are adapting to changes accelerated by the pandemic, return-to-office plans and today's talent market, including:

- Employers are taking a range of actions to advance inclusion, equity and diversity goals, with 57% of respondents revising recruiting and hiring practices, the top step taken. Reconsidering previously common elements of job descriptions – such as mandating in-person attendance or being based in a particular city – can help attract and retain diverse employees, particularly as several studies have documented the pandemic's unequal toll on women and people of color.
- Sixty-eight percent of respondents have expanded paid sick leave policies in the last two years and 65% saw increased employee benefits costs related to COVID-19.
- Among respondents whose organizations are deploying artificial intelligence and data analytics in workforce management, most (69%) are doing so in the recruiting and hiring process – primarily to screen resumes or applications (67%) and identify candidates (49%).
- Changes in data privacy regulations are on employers' minds. As companies face a continued onslaught of new and varying data protection laws in the U.S. and globally, 63% expressed concern about tracking the unique requirements in each jurisdiction in which they operate.