

*imagine* HR

NEWS

## Top HR Updates and "5 Things To Do" In 2022



### *Can You Imagine A Better Workplace?*

#### WORKPLACE TRENDS

This month's newsletter will prepare you for the year ahead. There are many workplace trends that have been shaped by the pandemic and many more issues that employers will want to keep on their radar. From compliance to culture, employers will want to ensure they are implementing the right policies to minimize their risks of employment law claims and, at the same time, look for creative ways to create a strong and stable workplace culture.

#### TOP ISSUES

2022 should be your year to press the "reset" and review all relevant HR and legal matters. We have included the "top issues" employers have dealt with in the recent past and will likely continue to confront in the future. They are issues that continue to cause confusion and create stress for many employers. Our goal is to break down these challenging issues and give you simple answers to some of the most complex HR and legal issues of our time.

#### COMING YEAR

In the coming year, employers will want to understand how to best navigate employee requests for time off and leave of absences; how they can reduce exposure to wage and hour violations (a growing exposure area); what they can do to mitigate claims of unlawful discrimination and hostile work environment (another tricky area); and other issues such as non-competes, medical marijuana, and much more. A comprehensive HR Audit will help!

### **2022 TO DO LIST: #1 Perform an HR Audit**

There is no better time to put a fresh set of eyes on all your employment policies and HR functions. Everything changed over the last couple years and, if businesses want to remain competitive, they must take a hard look at how they have been managing things. An HR audit gives business owners a chance to openly discuss their "workplace challenges" and identify opportunities for improvement. Through a guided process led by one of our HR consultants, we deep dive into all facets of HR - recruiting, hiring, onboarding, performance management and employee relations - to uncover inefficiencies and compliance gaps that not only weigh down an organization but also cause unnecessary legal risks.





## SPOTLIGHT ON BRIAN C. LEE, ESQ.

Brian has developed an extensive and diverse practice based on his excellent reputation as a skilled litigator. His specialty areas include employment law, medical malpractice and commercial litigation. After achieving partnership status at Reminger law firm, he left to start his own practice focused on complex litigation matters.

Brian's litigation skills have been recognized by the Best Lawyers in America, as well as being honored as a "Rising Star," a recognition given to less than 2.5% of lawyers by Ohio Super Lawyers Magazine.

In addition to his full-time litigation practice, Brian also spends his time helping businesses avoid litigation by implementing proactive and preventative workplace strategies. Hence, SB Workplace Consulting!

Stella and Brian decided to form SB Workplace Consulting as a way to bring a unique combination to their clients – Stella's HR best practices and Brian's litigation lens. Together, they train managers, investigate employee complaints and conduct workplace audits – all to make sure employers are minimizing their risks while maximizing morale and productivity.

# Welcome to SB Consulting!

My awesome and amazing colleague, Brian Lee and I have some exciting plans for 2022 – we are officially launching SB Workplace Consulting, specializing in workplace trainings, assessments and investigations.

Our "no BS" approach is a refreshing alternative to traditional management training. We avoid corporate speak and legalese and simply say it straight. We believe that getting to the point and offering real life examples is the best way to learn and lessen an organization's liability risks.

Our top trainings include: Diversity & Discrimination (Cultivating a More Respectful Workplace); Workplace Harassment (Handling & Investigating Complaints); Navigating Complicated Leave Laws (Managing the FMLA & ADA); Essential Workplace Policies (What's In Your Employee Handbook?); Management & Leadership Best Practices (Everything You Need to Know to Manage & Lead with Confidence); and Covid-19 Topics/Updates.

## 2022 TO DO LIST: #2 Conduct Training

As a seasoned practicing employment lawyer, Brian has literally "seen it all." He knows exactly what can get business owners and managers into messy litigation matters, and he constantly sees how certain inadvertent and unintentional actions invite employment law claims.

In today's climate, it is more important than ever to have a knowledgeable management team that is well-equipped to handle employee issues and complaints.

Brian will be the first to tell you how quickly issues can escalate when they are not handled promptly and thoroughly from the start.

**Call us today to schedule training!**

# 2022 TO DO LIST: #3 Review Legal Updates

## **Ohio's Minimum Wage Law Increases**

Effective January 1, 2022, the minimum wage in Ohio will be \$9.30 per hour and \$4.65 for tipped employees of businesses with gross annual receipts of more than \$342,000 per year. In 2006, Ohioans voted in favor of a yearly minimum wage increase based on the rate of inflation. From September 1, 2020 to August 31, 2021, the Consumer Price Index increased by over 5.9%, according to the Department of Commerce. The state minimum wage will remain tied to the federal minimum wage at \$7.25 per hour for employees who are 14 and 15 years old, as well as employees at smaller companies. Employers will want to update their labor law posters reflecting this update.

## **The Covid-19 Vaccine Mandate – It's On Again!**

As of December 17, 2021, OSHA's ETS is back in play, requiring employers with 100 or more employees to mandate the vaccine (or test weekly). These employers will have until January 10, 2022 to comply (pending any further court actions). Weekly testing may be delayed until February 9, 2022, assuming an employer is making good-faith efforts to come into compliance. The ETS has specific standards that these covered employers will need to abide by, including (but not limited to) creating a list showing the vaccination status of each employee, obtaining proof of vaccination status and providing employees with up to 4 hours of paid time off to receive the vaccine. This will entail major planning and developing a detailed written policy. Contact us if you would like the full scoop on what will be required.

## **Beware An Uptick in Harassment/Discrimination Claims**

The Equal Employment Opportunity Commission (EEOC) reported that employees filed close to 70,000 charges of workplace discrimination and harassment last year. Specifically, claims of retaliation for reporting discrimination/harassment and claims related to disability, race, gender and age discrimination were reported as the top charges filed. Today, employees are empowered to speak up against conduct they feel is unfair. Many times, employers do not even realize certain conduct can be perceived as offensive. It will be imperative heading into the New Year that employers understand their obligations under law, starting with taking complaints seriously and acting quickly to investigate claims. However, it's also important that every individual involved in a conflict be given an opportunity to "tell their side of the story" – this is why it's critical to have a neutral, unbiased third-party conduct workplace investigations. Management training will also be your best defense against potential liability.

## **Wage and Hour Lawsuits Will Continue to Explode in 2022**

The Fair Labor Standards Act (FLSA) is a law that every employer should be familiar with. This is a federal law that dictates how employers must pay employees and many other nuanced "wage and hour" issues that can cause significant legal exposure for employers. According to recent trends in this area, wage and hour mistakes continue to pose a big risk for employers. Common issues include timekeeping errors and misclassification of employees as independent contractors or exempt from overtime pay. Between the new administration (President Biden's pro-worker stance) and the pandemic (much more remote work being done), it's a perfect storm for employers. To minimize litigation risk, we recommend a comprehensive review of your payroll practices and other wage and hour issues. Conducting this type of audit together with training will drastically reduce legal problems.

## **Medical Marijuana – Where Do Things Stand Today?**

Although marijuana is still considered an illegal substance under federal law, Ohio along with approximately 34 other states have legalized its use for medical purposes (and 18 states for recreational use). Ohio's marijuana dispensaries are now operational and more than 40,000 registered patients have purchased medical marijuana. This means that Ohio employers will encounter applicants and employees who use medical marijuana. Under Ohio law, however, employers can continue to maintain a drug-free workplace and to test for drugs, including medical marijuana. Unlike other states that are now providing greater protections and accommodations to medical marijuana users, Ohio still allows employers the right to refuse to hire or fire an employee who tests positive for marijuana (despite the fact that the user may be a legitimate medical marijuana card holder). Ultimately, it remains a choice for Ohio employers – they can continue with a zero-tolerance policy or decide to accommodate medical marijuana use (although they never have to accommodate use while at work or permit an employee to be impaired while working – this is far too dangerous and should never be allowed). This is a tricky area as state law is evolving rapidly. If you have questions or need your policy revised, reach out to us.

### **The Growing Hostility Toward Non-Competes**

As it currently stands, non-compete agreements are enforceable in Ohio as long as they are “reasonable” in terms of length of time and geographic scope. A reasonable non-compete is “no greater than is required for the employer’s protection of a legitimate interest.” In recent years, there has been a growing hostility toward non-competes and in July of this year, President Biden called upon the FTC to explore nationwide restrictions on their use, particularly for hourly, non-exempt workers. So what does this changing landscape mean for Ohio employers? Again, non-competes are still enforceable but they will be scrutinized for reasonableness. This means that employer’s must be prepared to specifically explain the reasoning behind the restrictive covenant (i.e. to protect trade secrets or the disclosure of highly confidential information). In fact, non-disclosure and non-solicitation provisions should be bolstered to show that the employer has legitimate interests to protect and have taken measures to protect proprietary information by clearly defining these provisions.

### **The Complexity of Navigating Leave Laws**

With many employees taking time off for serious health conditions and disabilities related to the pandemic, this has become a growing area of concern for employers. In addition, an increase in mental illness (anxiety and depression) and requests for time off have also compounded an already difficult issue of not having enough employees to cover shifts and meet customer demands. Employers are stressed trying to navigate employee requests for take time off to deal with a medical issue – they know the FMLA entitles employees to 12 weeks of leave, and they understand the ADA may provide additional time off as an accommodation (but they are unsure how to manage these requests in a way that balances their legal obligation with also trying to remain productive). For smaller companies, it’s less about having to comply with the FMLA and more about ways to “attract and retain” employees by creating leave of absence policies (i.e. medical or parental leave) that are flexible and provide time off when necessary. It’s in the best interest of employers to create checklists and policies to ensure consistent treatment of leave requests. Call us, we can help.

## **2022 TO DO LIST: #4 Be Intentional About Building A Great Workplace Culture**

Following two years of uncertainty and novel issues never before experienced in our lifetime, there is a sense of optimism for 2022. We’ve learned a lot and were forced to rethink our workplace norms – this is not necessarily a bad thing and, in fact, if we are looking at the glass half full, it was exactly what we needed to reexamine our workplaces and make improvements that were long overdue. Company and HR leaders will continue to be at the helm, continuing to rebuild and recreate workplace cultures.

So what did we learn over the last couple years? We learned that we can be more flexible while remaining productive. We learned that working smarter (through efficient use of technologies) can produce great results. We learned that humans are resilient and can overcome adversity by pivoting and reimagining. All good “lessons learned” that we can carry over into next year and beyond!

2022 will be a true test – will employers really make lasting changes, or will they go back to their old models? No doubt that the new workplace will require different strategies and ways of thinking about the overall “employment experience.” The organizations that will continue to thrive and survive will focus their efforts on providing benefits that matter to their employees and create a work environment that feels energizing and engaging. In an employee-driven market, employers will have to “sell” their organization as much as they will be interviewing the candidate.

The role of the leader has also changed over the last several years and will continue to evolve. As a manager in the current environment, it will be imperative to make an intentional effort to create a bond with employees and to not only spend time holding them accountable to their jobs but also inspiring them to develop and grow in their roles. Managers will have to manage consistently while also taking on true leadership attributes – this will be imperative in attracting and retaining top talent.

In the new workplace, employees won't be looking for the perks that made some companies uber-attractive in the past – such as happy hours and ping pong tables. While these are “nice to haves,” employees will be seeking something more meaningful in their work experiences – opportunity to grow and advance, flexibility and remote work options and fair treatment/competitive pay. Workplaces that are genuinely more inclusive and respectful will win over other environments that do little to nip toxic behaviors, such as gossiping, favoritism and unhealthy attitudes.

Having a strong HR leader to help assist with employee relations matters and to ensure hiring, onboarding and performance management are being handled in the best possible way will go far in creating a great workplace.

## 2022 TO DO LIST: #5 Conduct An Employee Opinion Survey

This could be the best decision you make entering the New Year. Because employers have mainly been in “survival mode,” this is the perfect time to take a step back and ask your employees what they really think about their work experience and the company they are working for. Taking time to listen to your employees’ feedback and showing a real interest in what they have to say will be an excellent way to further engage your workforce. And the feedback you receive will be invaluable to the decisions you make moving forward... perhaps you will decide to modify certain policies (that no longer serve the organization), reallocate funds to a different (and more desirable) employment benefit, or implement a more streamlined HR process.

An employee survey doesn't need to be long or complicated. Simply asking 5-10 questions about the overall culture, communication and teamwork can be a good starting point as well as questions about perceptions on pay, benefits, rewards and recognition. This is a great tool to shed light on what is working well in your workplace and to get clear on what may need to enhance in the coming year!



Thank you for taking the time to read my newsletter.

I will continue to share important information on relevant workplace topics and spotlight businesses and consultants here in Northeast Ohio making a difference. Feel free to reach out anytime at [stella@imaginehrconsulting.com](mailto:stella@imaginehrconsulting.com) or 440.897.1991 for more information.

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