The Littler® Annual Employer Survey Report

May 2022

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This report summarizes and analyzes data gathered from 1,275 in-house lawyers, C-suite executives and HR professionals based across the United States. The survey explores how employers are responding to an accelerating evolution of the workplace and managing a range of complex issues – from long-term policy and operational changes resulting from the pandemic to complying with ever-changing workplace regulations.

Disclaimer: The survey questions and their resulting findings do not represent any specific political affiliation or preferences of Littler, nor do they convey or constitute legal advice.

Executive Summary

No one said adjusting to the "new normal" would be easy.

That sentiment is hitting home for employers 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. Issues and initiatives that have consumed the corporate world's attention – from vaccine policies to hybrid work models to evolving regulations and emerging technologies – are now entering a pivotal phase, posing new challenges and opportunities alike.

To better understand this particular moment, the Littler® Annual Employer Survey 2022 analyzes insights gathered from nearly 1,300 executives. The resulting data provides a window into where U.S. employers stand on key issues, their rationale for various workplace decisions and where their principal concerns lie – all detailed with an eye toward how employers can best lay the foundation for the workplace of tomorrow.

Employers are relatively split on the ongoing question of whether to mandate vaccination for employees. Just over 40% have a policy that requires COVID-19 vaccination or regular testing – nearly double the percentage who said their organizations were mandating vaccinations or planning to do so in our last survey in August 2021. Though the decision of whether to mandate is driven by a range of factors, our survey illuminates that no choice related to vaccine mandates is cost-free.

On one hand, employers cited a range of potential benefits of requiring vaccinations, including contributing to public health, aiding a return to more in-person work and improving business continuity. On the other hand, mandates may bring administrative burdens and employee relations issues, particularly in today's labor market.

Notably, the level of concern about vaccine mandates is lower among those survey respondents whose organizations have already instituted mandates – and the perceived positive impacts are more pronounced – suggesting that some of the perceived challenges with requiring vaccination may be more daunting in perception than in reality. For instance, respondents whose organizations have vaccine mandates in place are less concerned about such mandates leading to loss of staff (51% compared with 85% of those without mandates) and the difficulty of recruiting new staff (32% versus 65%). With regard to the positive effects, 68% 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).

In addition to employee relations issues, the challenges for employers stem from a lack of regulatory clarity, most prominently in relation to the suspended Occupational Safety and Health Administration (OSHA) Emergency Temporary Standard (ETS), as well as the growing patchwork of state and local rules on vaccine mandates. Employers also expressed concern about regulatory changes in the next 12 months that go beyond pandemic-related workplace safety. Over 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 (DOL) (65%) and the Equal Employment Opportunity Commission (EEOC) (63%).

The effects of workplace decisions and regulations will only intensify as workers increasingly return to the office, where the potential for workplace COVID-19 infections will rise and employee relations issues will play out in person. 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%). Thirteen percent plan to institute a return-to-office policy but have not yet set a date. The remainder did not have any employees working remotely (14%) or have shifted to all remote work (6%).

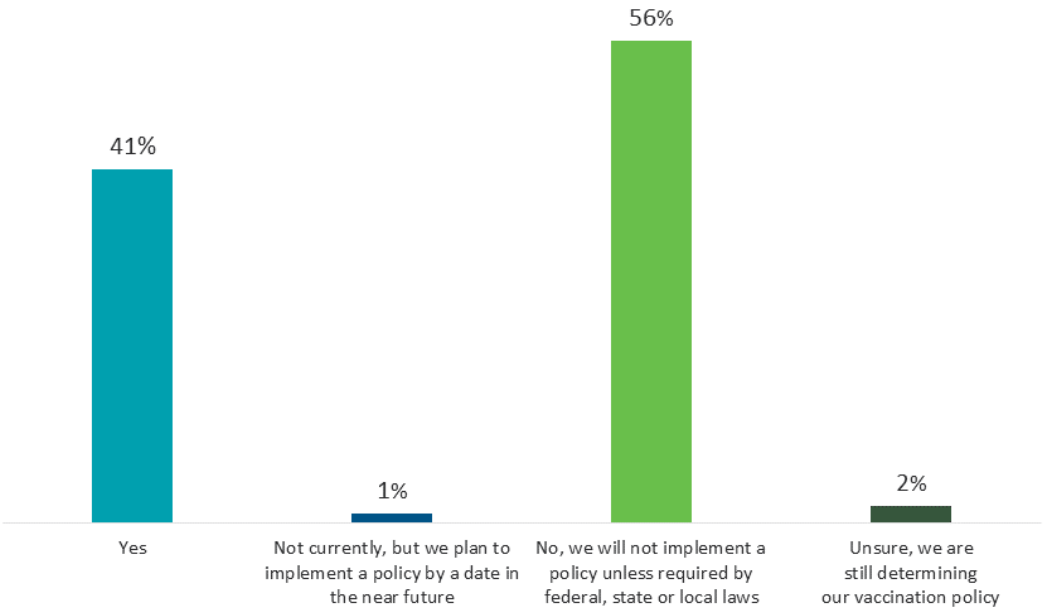
Amid the fierce competition for talent, employers see flexibility and remote work options as key offerings. Nearly all (97%) are already offering or considering expanding such options to help attract and retain employees – and 47% are doing so to a great extent. Despite the broader acceptance of flexibility, however, maintaining company culture and employee engagement within a hybrid work model is an ongoing concern, as noted by 86% of respondents.

The data reveals several other areas where employers are adapting to changes accelerated by the pandemic and today's talent market, including new and expanded benefits offerings; the advancement of inclusion, equity and diversity (IE&D) plans and goals; and the increasing use of AI and other technologies in recruiting efforts. The many important findings and insights that emerged from this year's report are covered in-depth in the charts and analysis that follow.

This survey focuses primarily on policies and approaches for workers within a company's U.S. operations. A variety of factors that are beyond the scope of this survey may impact an employer's operations outside the U.S. Responses to some questions do not add up to 100% due to rounding, and some exceed 100% because respondents were invited to select more than one answer. For the full survey methodology and a breakdown of respondent demographics, *see page 32.*

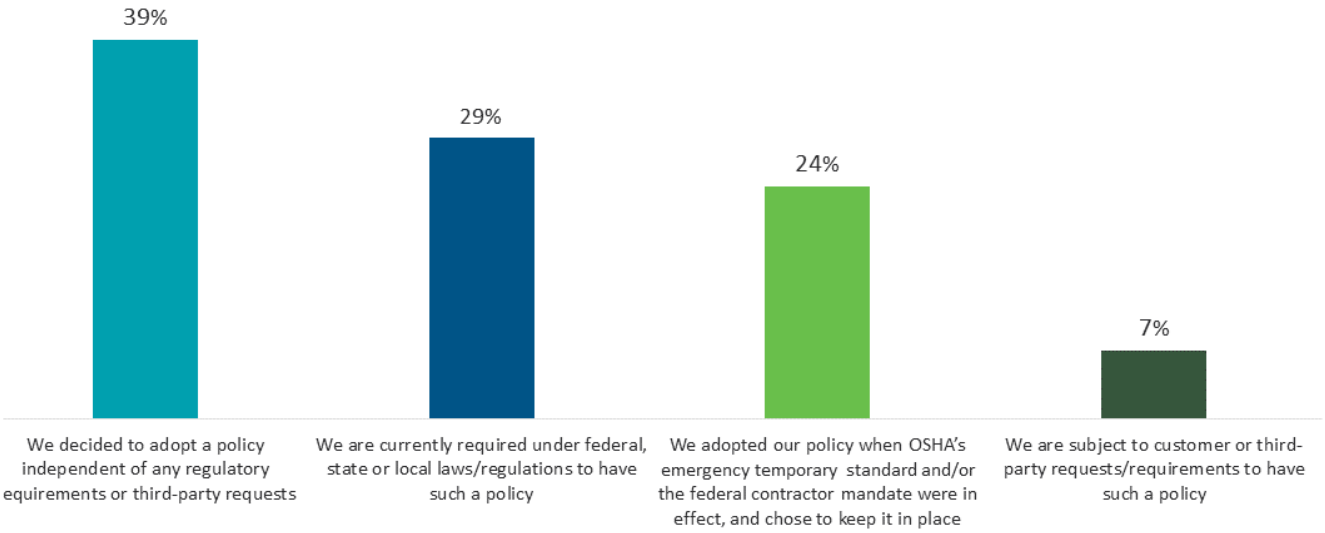
Vaccine Policies

Does your organization have a policy that requires COVID-19 vaccination or regular testing for employees in some form?



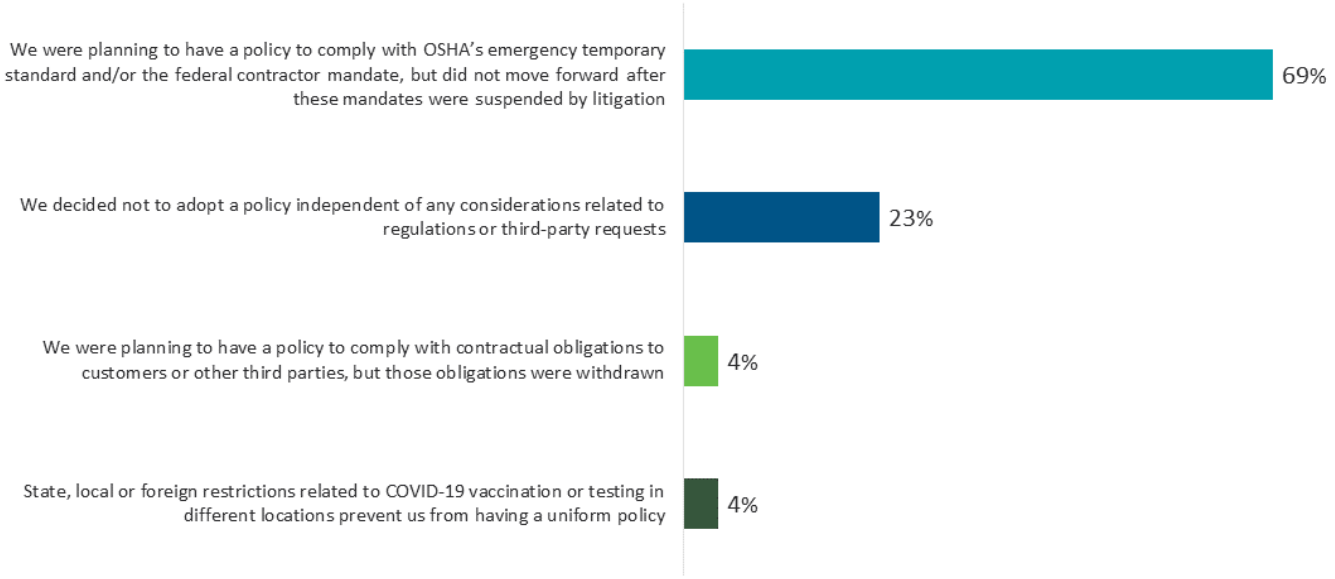
Which of the following best describes why your organization has adopted, or plans to adopt, a mandatory vaccination policy?

This question was only asked to those whose organizations have, or plan to implement, mandatory vaccination policies.



Which of the following best describes why your organization has not adopted a mandatory vaccination policy?

This question was only asked to those whose organizations do not have mandatory vaccination policies.



When we last queried employers about vaccine mandates, in our August 2021 survey, only 21% of respondents said their organizations were mandating vaccines or planning to in some form – more than double the less than 10% who said the same in January 2021. By March 2022, when this survey was conducted, the percentage had nearly doubled again, with 41% of respondents mandating vaccination or requiring regular testing. Fifty-six percent said they will not implement such a policy unless required by law.

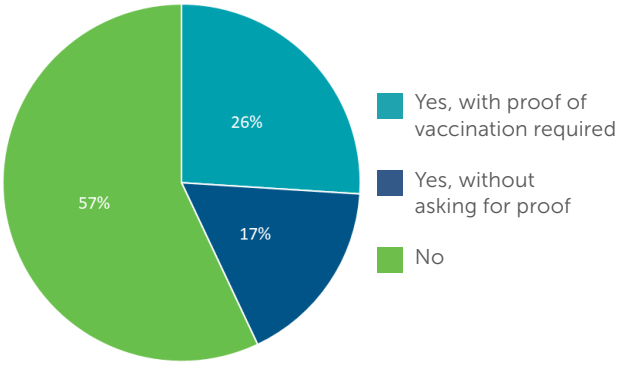
Organizations with more than 10,000 employees are slightly more likely to mandate vaccinations (46%), and nearly 80% of healthcare organizations have such policies in place – understandably, given regulations specific to that industry. The proportion went down, however, for respondents in manufacturing (16%) and hospitality or retail (30%).

As far as what has motivated employers, 39% of those with existing vaccine mandates decided to put such a policy in place independent of regulatory requirements or third-party requests. That number equates to 17% of all respondents and is comparable to the 21% who were currently instituting or planning to institute mandates in Littler's August 2021 survey. The recent jump could therefore be explained in large part by respondents who instituted a policy in some form due to federal, state or local requirements (29%) or adopted a policy when OSHA's ETS and/or the federal contractor mandate were in place and chose to keep it after those programs were suspended by litigation (24%).

Additionally, and not insignificantly, our survey found that 43% of employers have been asked by customers or business partners that they only be served/serviced by vaccinated employees – and 85% of those asked accommodated the request. As more businesses return to in-person work, it will be important to monitor the role of these business-to-business or business-to-customer interactions in setting policy.

As for those who have not adopted a policy, 69% said their plans stalled when OSHA's ETS and/or the federal contractor mandate were suspended by litigation. Twenty-three percent opted against a policy regardless of regulations or third-party requests, and the remainder cited customer contractual obligations/third-party requests being withdrawn or the fact that restrictions in various jurisdictions prevented them from having a uniform policy. These findings suggest that the lack of a consistent national public policy approach to COVID-19 has strongly influenced businesses that were already hesitant about imposing vaccine or testing mandates.

Employers faced with requests to be served/ serviced only by vaccinated employees



What's next?

A January 13 decision by the U.S. Supreme Court stayed implementation of OSHA's ETS, and enforcement of the federal contractor vaccine mandate is currently enjoined nationwide. However, also on January 13, the U.S. Supreme Court upheld the Centers for Medicare and Medicaid Services (CMS) interim final rule requiring healthcare worker vaccinations.

Alongside the wrangling at the federal level, numerous states have issued vaccination mandates impacting employers since mid-2021 – although the focus primarily has been on those working in the public sector, as well as the healthcare and nursing home industries. Further complicating the situation for employers, some states have legislatively curtailed the ability of companies to require employee vaccinations and/or provided greater leeway for employees to seek exemptions from vaccination. The latter has occurred through easing the standards for asserting religious and medical exemptions and/or by creating new permitted exemptions, such as personal conscience.

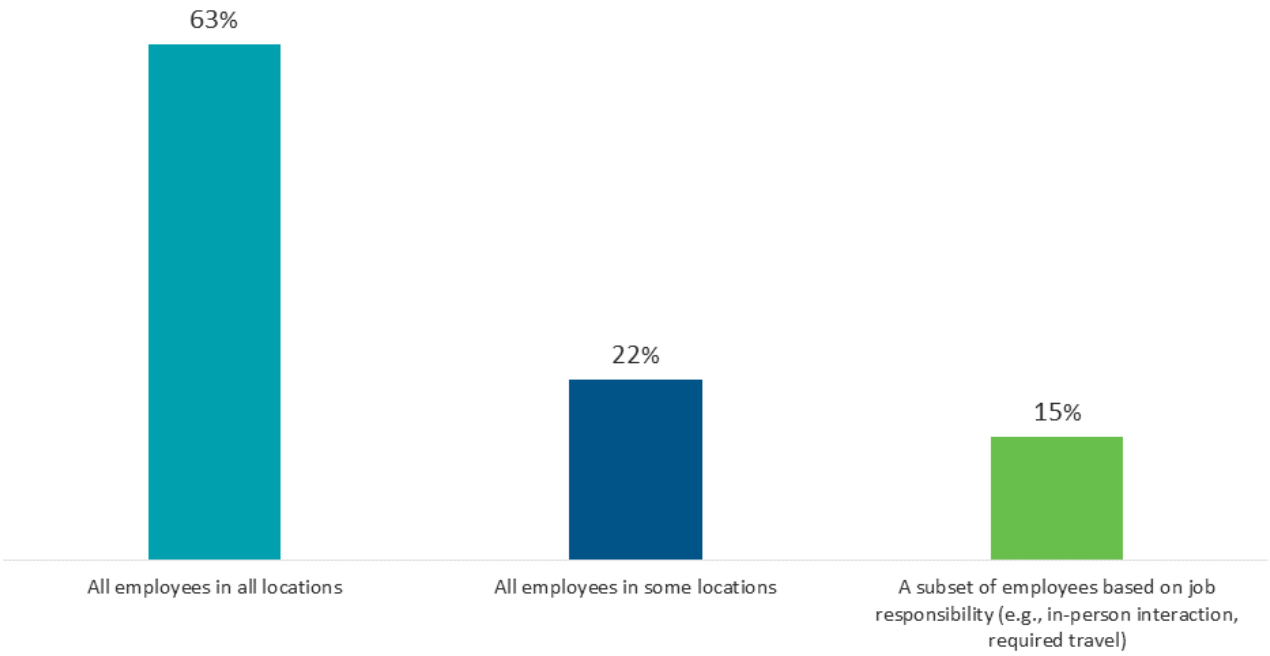
Despite the still-evolving regulatory environment, our survey data suggests that employers have largely made up their minds about whether or not to mandate vaccination. Only 1% are planning mandatory vaccination policies that haven't been implemented yet, and only 2% remain unsure of their plans.

As for booster shots, just 29% of those who have a mandatory vaccine policy require (or plan to require) boosters; 43% are considering doing so, while 28% said they are not. This is an issue that employers with vaccine policies will likely need to continue to monitor as public health guidance related to COVID-19 boosters develops.

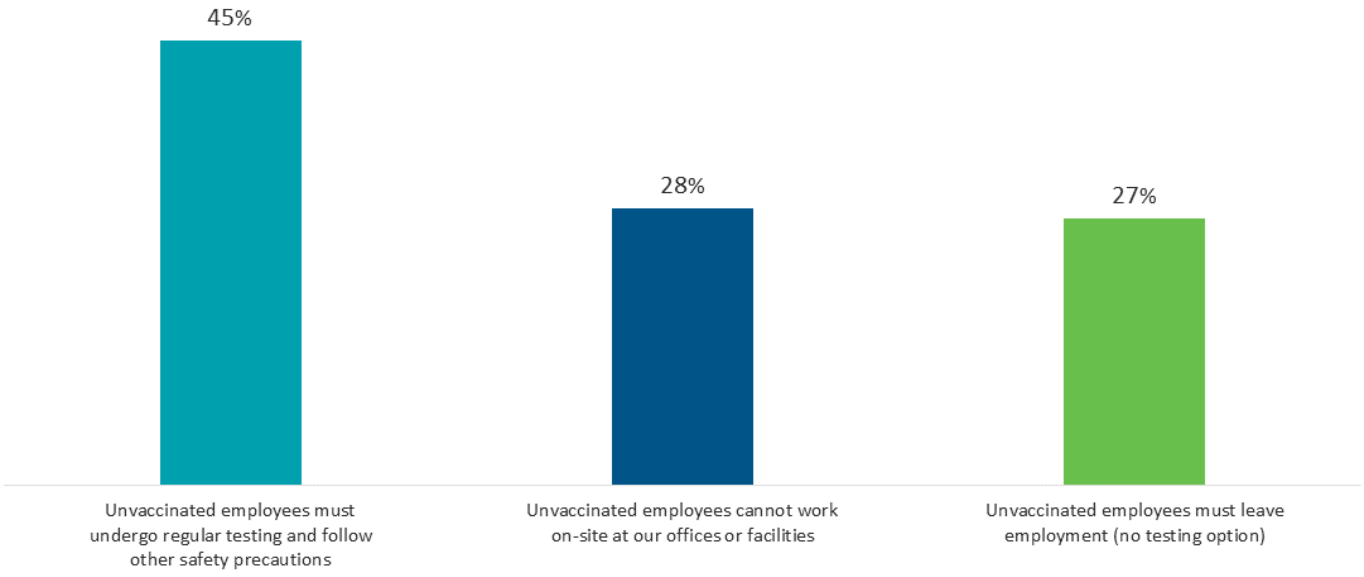
Defining Vaccine Mandates

Responses only from those with mandatory vaccination policies.

Employees covered by your organization's mandatory vaccination policy:



Approach to employees who refuse vaccination and who do not have a medical, religious or other legally recognized exemption:



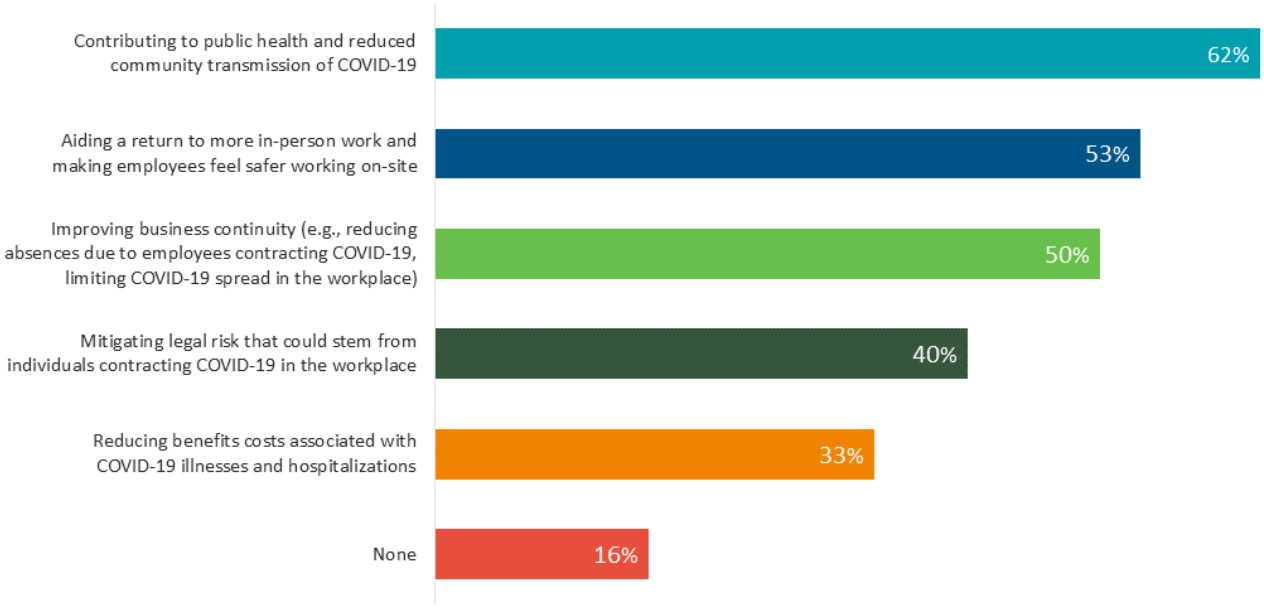
Employers' vaccine mandate policies differ in significant ways. Though 63% apply their policy to all employees, 22% said their policy applies to all employees only in certain locations, and 15% said it applies only to a subset of employees based on job responsibility (*e.g.*, those with required in-person interaction or work-related travel).

As for how these organizations are approaching employees who refuse vaccination but do not qualify for an exemption, 45% said such employees must undergo regular testing and follow other safety precautions, 28% said such employees cannot work on-site at their offices or facilities and 27% said they must leave their job altogether.

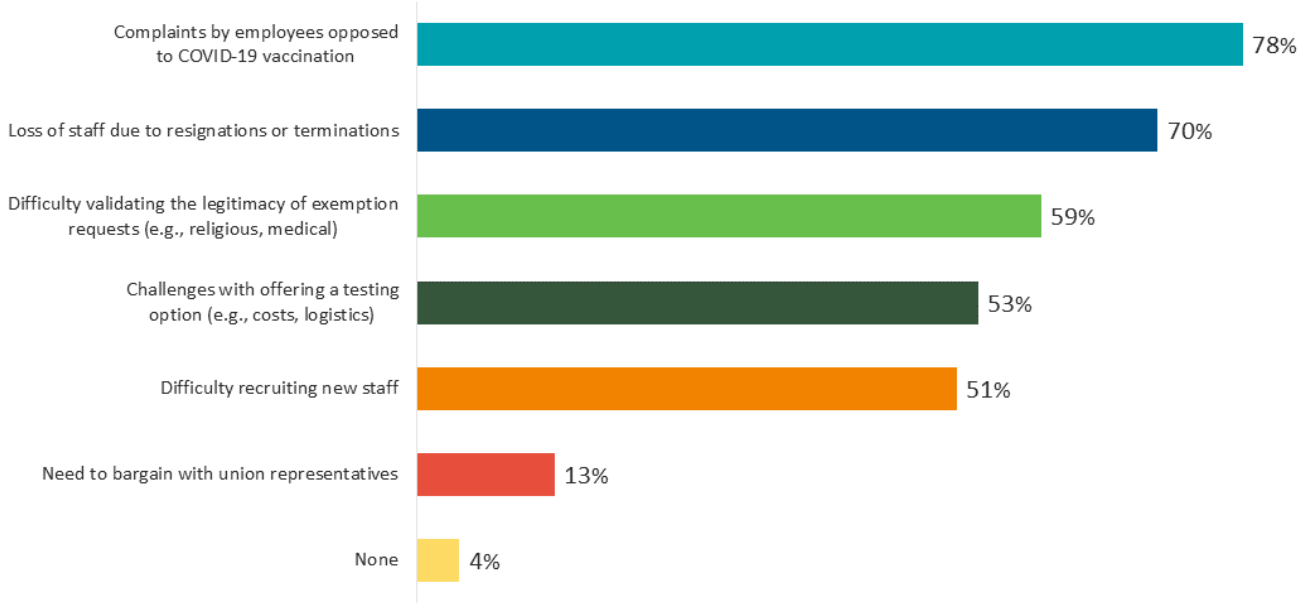
The complex nature of these policies, which set different safety and work rules for different groups of employees, may fuel employee relations challenges, which are discussed later in this report.

What positive effects have you seen, or would you anticipate, from a mandatory vaccination policy?

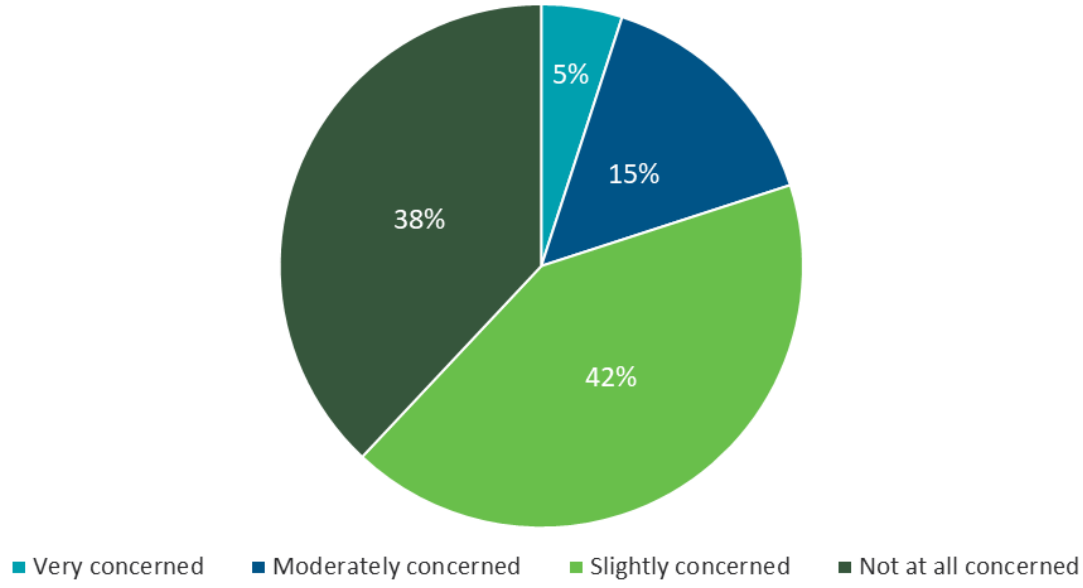
(Check all that apply)



What employee relations challenges have you seen, or would you anticipate, from a mandatory vaccination policy? *(Check all that apply)*



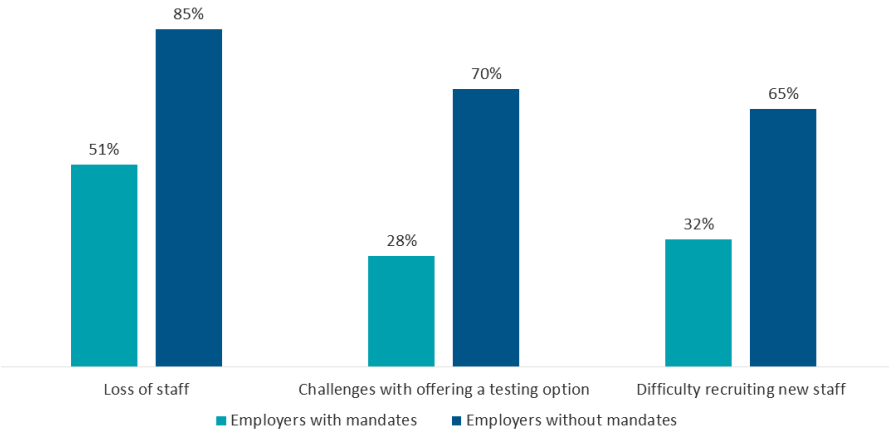
To what extent is your organization concerned about discrimination or retaliation complaints from unvaccinated employees who feel they are subject to adverse action due to their vaccination status (e.g., being excluded from the workplace or in-person events, being passed over for promotions/ opportunities, negative treatment from vaccinated employees due to their decision not to be immunized)?



Given today's tight labor market and ongoing polarization around the issue of vaccination, it's no surprise that respondents continue to express concern about employee relations challenges associated with mandating vaccines. Consistent with our 2021 surveys (see page 6 here), the top concerns with mandating vaccines continue to center around resistance from individuals opposed to vaccination and the potential loss of staff.

But that doesn't tell the whole story. A deeper dive into the data – namely, the differing perceptions of those who have mandated vaccines and those who have not – suggests that some of these challenges could be more daunting in perception than in reality.

Concerns with Vaccine Mandates



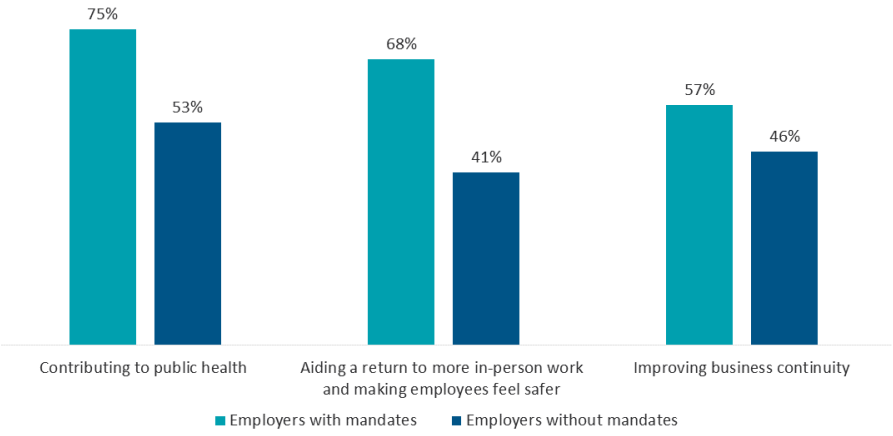
For instance, among the respondents whose organizations already have vaccine mandates in place, far fewer are concerned about the loss of staff due to resignations and terminations (51%, compared with 85% of those without mandates), the difficulty of recruiting new staff (32% versus 65%) and the logistical challenges in offering a testing option (28% versus 70%). The variation is a bit less pronounced when it comes to concern over complaints by employees opposed to vaccinations (71% versus 85%), and difficulty validating the legitimacy of exemption requests (50% versus 65%).

Most respondents (62%) – and 68% of those with vaccine mandates in place – expressed some level of concern about discrimination or retaliation complaints from unvaccinated employees. The concern was even higher (80%) for organizations with more than 10,000 employees.

In addition to whether a company has a vaccine mandate or not, there are several reasons why employers could experience different reactions to their policies, including their particular industries, geographies and worker demographics. It also appears that these issues haven't come into play as much in what has (for many) still been a largely remote work environment.

It's likely, too, that those who instituted vaccine mandates did so in part because they felt, for one reason or another, that their workplaces would be broadly receptive to them. Some of our respondents, for instance, told us that mandates might even *improve* employee relations, be it by "enabling the relaxation of other COVID safety measures" or providing a consistent standard that leads to "less friction between employees."

Perceived Benefits of Vaccine Mandates



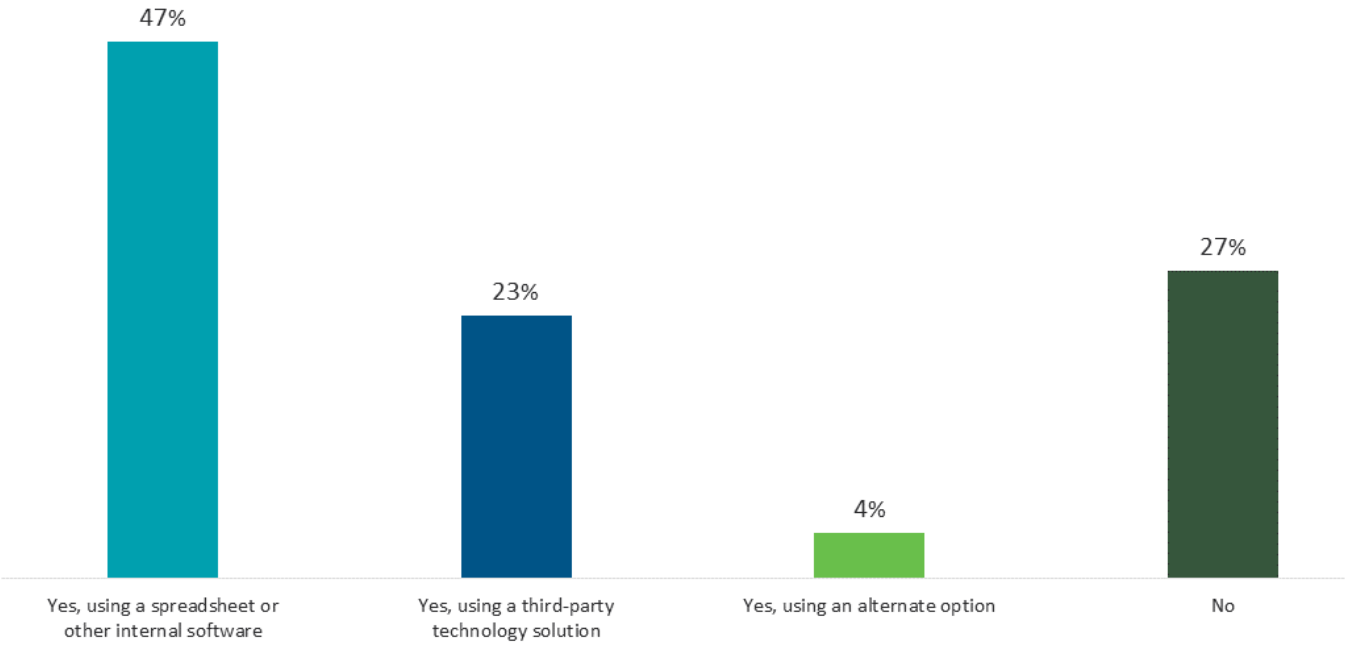
It follows that respondents noted a range of positive effects from mandating vaccination – with those who have already put policies in place understandably seeing these effects more widely than those who have not. Importantly, the top positive impact is related not to a company's own operations or bottom line, but rather to contributing to public health and reduced community transmission of the virus (75% who already have a policy in place compared with 53% of those without mandates). Workplace-focused benefits include aiding a return to in-person work and making employees feel safer on-site (68% versus 41%) and improving business continuity (57% versus 46%). Only 4% of those with mandates in place (compared with 25% of those without) said there are no positive effects.

Whether a business adopts a policy or not, these issues will only become more prevalent amid the return to more in-person work and the competitive recruiting market. A sizable portion of respondents (70%) say applicants have inquired about COVID-19 vaccination policies or safety measures.

> 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. As more employees return to on-site work, the implications of 'living with COVID' will really come to the fore – and every course of action has consequences for worker safety and business continuity. 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.

Devjani Mishra, a leader of Littler's COVID-19 Task Force and co-leader of the firm's Vaccination Working Group

Does your organization currently, or plan to, verify and track the vaccination status of workers?



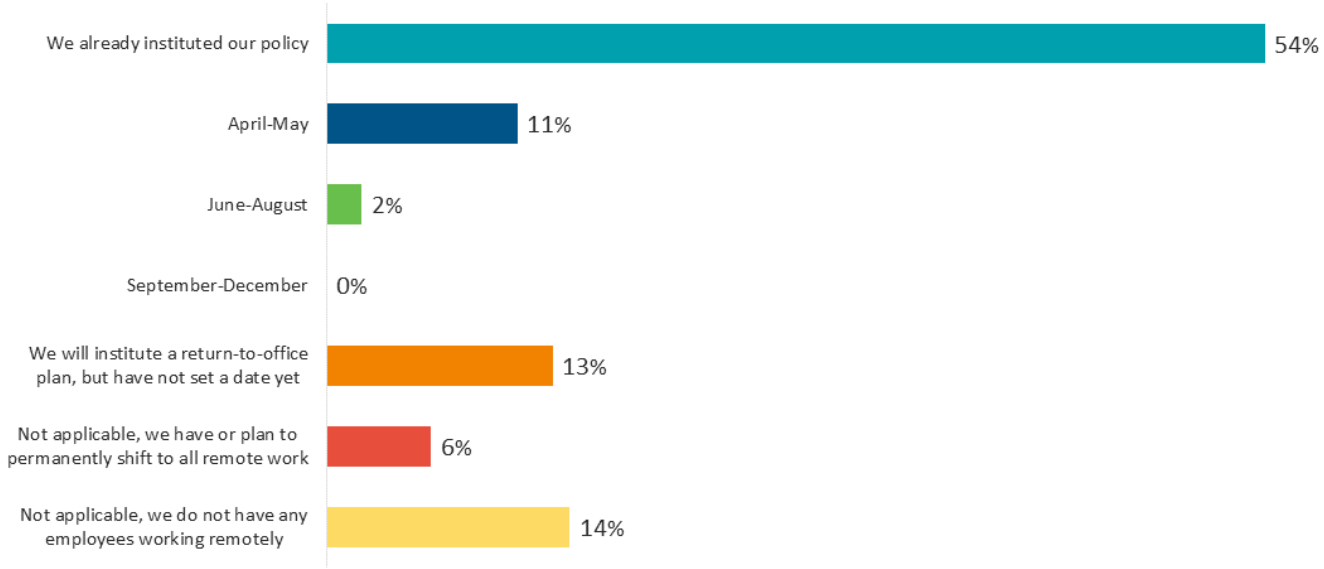
Roughly three-quarters of respondents (74%) – and 81% of companies with over 10,000 employees – are currently tracking or planning to track the vaccination status of workers. This is a natural progression from our survey results in August 2021, which showed that 68% of employers were asking workers to voluntarily disclose whether they had been vaccinated. Most of this year's respondents are tracking vaccination statuses using spreadsheets or other internal software, both of which could raise data privacy issues, as vaccination data is considered confidential medical information.

Importantly, while 56% of respondents do not have a vaccine policy in place, more than half of those employers (54%) *are* still tracking the vaccination status of workers. This is a promising sign. As we noted in August, while there may be no one-size-fits-all approach to mandating vaccinations, it remains crucial for employers to gather the information that would guide workplace safety decisions – which includes determining the number of workers who already have been vaccinated.

Finally, as noted above, this survey focuses on COVID-19 policy concerns for U.S. workplaces. Employers with multinational operations face an even more complicated picture, including continuing COVID-19 surges, widely varying regulatory frameworks and restrictions, and of course, unprecedented, non-pandemic-related cross-border challenges. Those issues are beyond the scope of this survey, but obviously will have significant ramifications for workers and workplaces for the rest of 2022 and beyond.

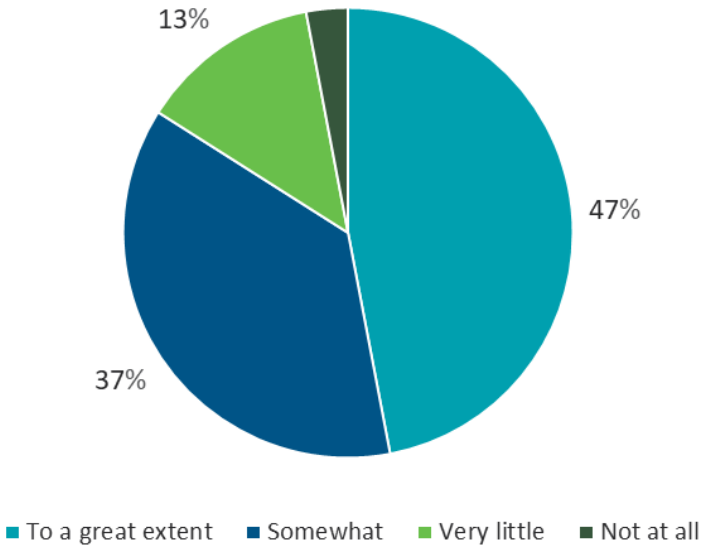
Office Reopenings

When does your organization plan to implement a formal policy for returning employees who can work remotely to in-person and/or on-site work (either full-time or on a hybrid schedule)?



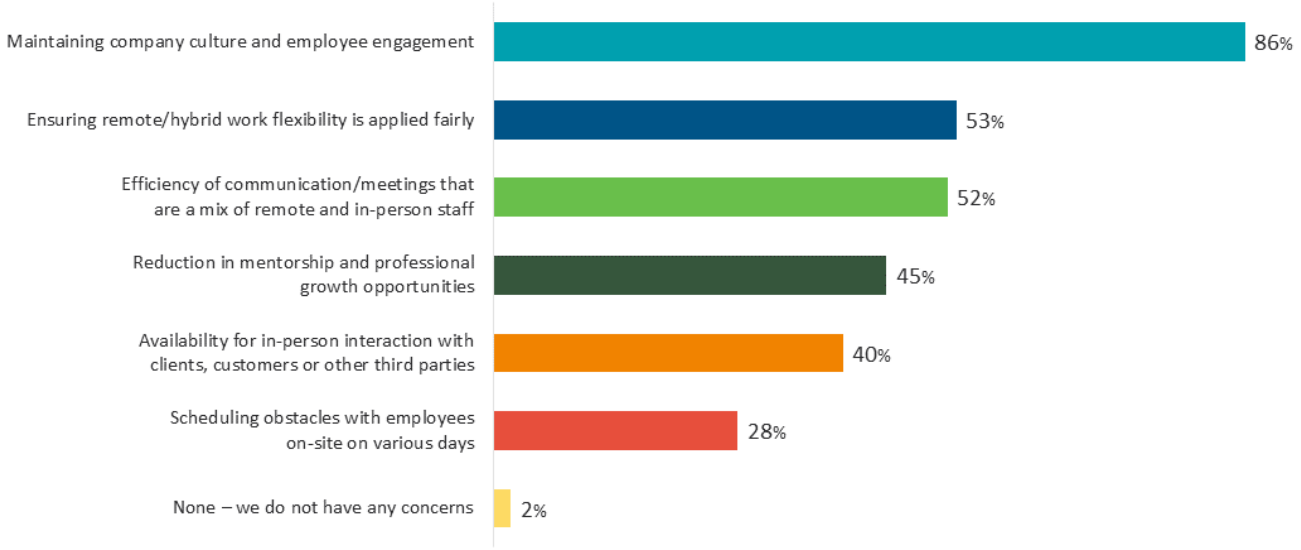
To what extent has your organization offered, or considered offering, more flexibility or remote work options to attract and retain employees in a competitive talent market?

This question was not asked to those whose organizations have shifted to permanent remote work or do not have employees working remotely.



Which of the following represent concerns of your organization with regard to managing a hybrid work model? *(Check all that apply)*

This question was not asked to those whose organizations have shifted to permanent remote work or do not have employees working remotely.



Across the country, more employees are returning to in-person work in some form, with office occupancy rates reaching 43% in April, according to data from the security firm Kastle. Of our respondents, 54% said they had implemented return-to-office policies as of the end of March. Only about a quarter planned to return between April and August (13%) or by a yet-to-be-established date (13%). The remainder did not have any employees working remotely (14%) or have shifted permanently to remote work or plan to do so (6%).

Simply because a return-to-office policy is in place, however, does not mean employers are withdrawing flexibility and remote work options. When asked to what extent their organization has offered, or is considering offering, more flexibility or remote work options to help attract and retain employees, nearly half (47%) said they have to a great extent and only 16% said "very little" (13%) or "not at all" (3%). Employers with more than 10,000 employees are especially open to such options, with 53% saying they have to a great extent and only 8% saying "very little" (7%) or "not at all" (1%).

Their responses are in line with the sentiments of today's labor market: In a survey that global market research firm Ipsos conducted of workers last year, for instance, 30% said they would consider seeking a new job if their current employer required them to return to the office full time. Not coincidentally, many major companies have integrated remote work into their corporate cultures and several tech companies have taken it a step further with "work-anytime" policies.

Despite the broader acceptance of flexibility, there remain persistent questions about what this emerging, hybrid workplace model will look like. When asked about this, nearly 9 in 10 respondents expressed concern about maintaining company culture and employee engagement. Over half were concerned about fairly offering remote/hybrid work flexibility (53%) and about the efficiency of communication and meetings that are a mix of remote and in-person staff (52%).

Significant numbers of respondents were also concerned about reduced mentorship and professional growth opportunities (45%); workers' availability for in-person interaction with clients, customers or other third parties (40%); and scheduling obstacles with employees on-site on various days (28%). Only 2% said they do not have any concerns.

Verbatim responses provided additional context, with participants citing the challenge of "practicing equitable and inclusive behavior when there is a mix of remote and in-person staff," the "impact on innovation" stemming from a hybrid work model, and issues that may stem from "employees working from home across state lines."

Inclusion concerns also came up, perhaps nodding to disparities in how certain groups experience the in-office environment. For instance, a recent Future Forum study found that women and people of color were more likely to see working remotely as beneficial than their white male colleagues. The study also found an "executive-employee disconnect," as three-quarters of executives reported that they want to work from the office three to five days a week, compared with about one-third of non-executive employees.

These disparities certainly exacerbate obstacles for employers looking to return to the office – yet they also present competitive advantages for those who can navigate the new landscape effectively. A consultant summed up the crux of the challenge well in a recent article in *The New York Times*: "What have companies done to upskill senior leaders and managers so they're going back into the office with empathy? Not one single person who reenters the office in the next three months is the same as the one who left."

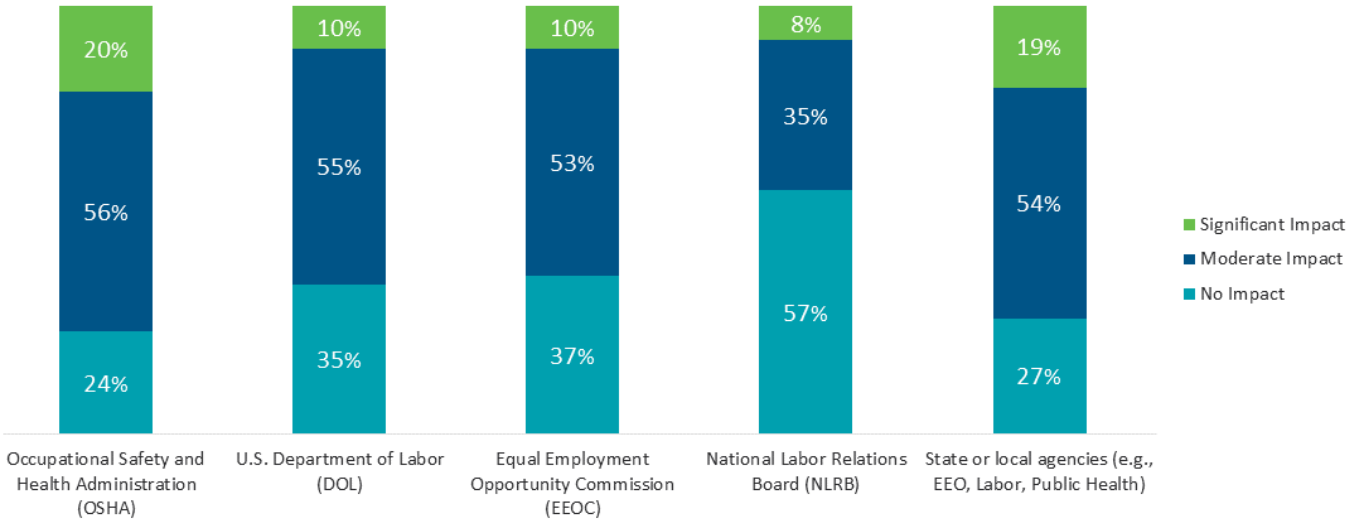
"We are at a pivotal moment in the world of work. Employees have become comfortable with not coming into the office, and given the current labor market, they have substantial leverage in asserting their preferences. There's plenty of opportunity for employers to retain the benefits of both remote and 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.

Barry Hartstein, co-leader of Littler's COVID-19 Vaccination Working Group and Co-Chair of the firm's EEO & Diversity Practice Group

Workplace Regulation

How much impact do you expect enforcement by the following regulatory agencies, and compliance with their respective requirements, to have on your workplace over the next 12 months?

The below chart excludes data from the 19% of respondents who said the NLRB is not applicable to their organizations.



When employers responded to our 2021 Employer Survey just after President Biden took office with plans to be "the strongest labor president you've ever had," they were understandably concerned about the impact regulatory agencies would have on their workplaces (see page 12 here).

Fast forward to a year later, and employers still foresee a substantial impact from enforcement by various regulatory agencies and compliance with their respective requirements over the next 12 months. While the level of concern has leveled or dropped off a bit in some instances –understandably given that we're past the "fear of the unknown" that comes with the start of a new administration – there are several areas in which regulatory agencies are expected to impact the workplace in the year ahead.

More than three-quarters of respondents (76%) expect a moderate or significant impact from OSHA regulations and enforcement. With more employees returning to in-person work and COVID-19 likely to remain in circulation for the foreseeable future, employers are rightly focused on actions OSHA will take to protect worker safety and health.

Employers are also eyeing new regulations and enforcement actions from the DOL and EEOC, with about two-thirds expecting a moderate or significant impact from each of these agencies. The DOL continues to prioritize a range of policies that will impact workforce management – chief among them a new proposed rule that would make more workers eligible for overtime pay, which, as of this writing, is expected later this year. While major policy changes have not yet been seen at the EEOC under the Biden administration, that will likely change when Democrats establish a functioning

majority on the commission, which could come as soon as July 2022. Respondents are likely bracing for the EEOC to prioritize a range of new initiatives, including pay data collection and transparency, that will affect employers.

While the NLRB ranked lower on the list (only 43% of respondents anticipate a moderate or significant impact), there are several areas that companies should have on their radar – whether their workplaces are unionized or not. For instance, the White House Task Force on Worker Organizing and Empowerment released a long-awaited report earlier this year detailing nearly 70 recommendations for revising U.S. labor laws and regulations. The NLRB's new general counsel, Jennifer Abruzzo, has also highlighted plans to reexamine several areas of labor law, many of which would impact union and non-union employers alike.

Across the board, employers with more than 10,000 employees expect a moderate or significant impact from federal agencies to a greater extent than all respondents, including OSHA (82%), the DOL (74%), the EEOC (77%) and the NLRB (57%).

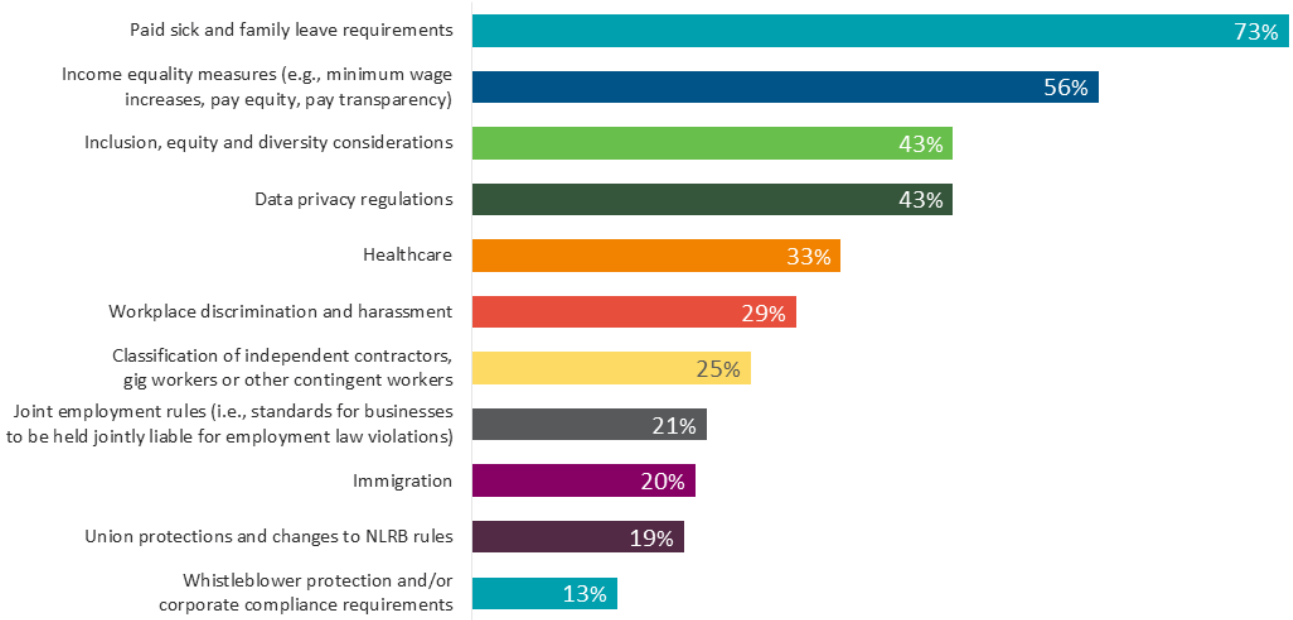
Respondents in the manufacturing and hospitality/retail industries are unsurprisingly more concerned about OSHA (89% of the former expect a moderate or significant impact, while 82% of the latter expect the same). Hospitality/retail respondents, perhaps in response to the anticipated overtime rule, are more concerned about the DOL, with 73% expecting a moderate or significant impact on their businesses.

Nearly three-quarters of employers (73%) also expect a moderate or significant impact from state or local agencies' enforcement actions and compliance requirements. These could range from state OSHA agencies imposing their own infectious disease standards to family leave-related legislation to anti-discrimination statutes, pay transparency initiatives and independent contractor classification rules.

> New leadership at key federal agencies, combined with numerous different state and local agency agendas, will have a powerful impact on employers' compliance functions, how they operate and their bottom lines. At the EEOC, for instance, the coming Democratic majority and a potential boost in funding from Congress should lead to the agency stepping up its enforcement efforts around everything from pay transparency and unlawful retaliation to LGBTQ+ rights and potential biases in AI tools used to screen and hire workers.

James A. Paretti, Jr., Littler shareholder and member of the firm's Workplace Policy Institute; former chief of staff and senior counsel to the acting chair of the EEOC

Outside of the Biden administration's COVID-19 response, in which of the following areas do you expect employment law-related changes that will impact your business over the next 12 months? *(Check all that apply)*



Employers expressed a myriad of concerns that extend beyond the government's response to the ongoing pandemic.

Nearly three-fourths of respondents (73%) expect employment law-related changes to paid sick and family leave requirements to impact their businesses in the next 12 months. Undoubtedly influenced by the pandemic, and with no federal standard in place, numerous states and localities have continued to update their paid sick and family leave laws.

Several go into effect in 2022. In California, for instance, employees will now be able to take leave to care for parents-in-law. In Colorado, paid sick mandates will now cover small businesses. Illinois will provide victims of violent crimes and their families with unpaid leave, while New York has changed the manner in which family leave is calculated. And these are just a few examples, with more changes likely on the way.

Income equality measures (*e.g.*, minimum wage increases, pay equity, pay transparency) are expected to have an impact on over half (56%) of respondents' businesses. This tracks with our findings above, which illustrate that pay transparency is an issue likely to be taken up by state agencies and a soon to be Democrat-controlled EEOC. Minimum wage increases in numerous states and cities are also set to go into effect in 2022.

Inclusion, equity and diversity (IE&D) considerations, meanwhile, are expected to have an impact on 43% of respondents' businesses. For more on what steps companies are taking in this regard, please see the IE&D section of this report.

Data privacy also rose to the fore as a key concern. Notably, this is the only area where respondents expressed more concern about employment law-related changes in comparison to our data last year (see page 13 here) – rising from 38% to 43%. Employers are likely looking ahead to the California Privacy Rights Act of 2020, which goes into effect on January 1, 2023, and will dramatically expand the data privacy obligations of most employers doing business in the state. The level of concern about data privacy regulations is even higher this year for respondents from companies with over 10,000 employees (50%) and those in the manufacturing (47%) and retail/hospitality industries (49%).

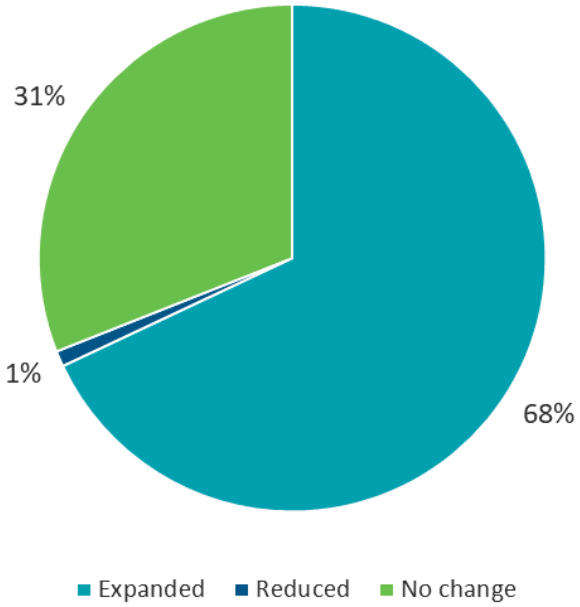
Employers with more than 10,000 employees are more likely to anticipate an impact on their businesses in several other areas, particularly when it came to paid sick and family leave (77%), income equality measures (61%), IE&D considerations (47%) and union protections and changes to NLRB rules (36%).

Given the ever-changing patchwork of state paid sick and family leave laws, it's no surprise that employers – especially larger ones – expect these issues to impact their businesses. But they're also being hit from all sides with new employment law-related challenges, from wage requirements to data privacy regulations and more. As the hot labor market and 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.

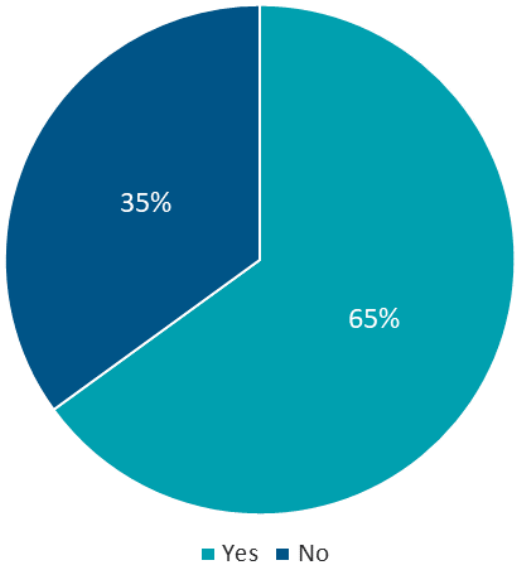
Michael Lotito, Co-Chair of Littler's Workplace Policy Institute

Paid Leave and Employee Benefits

Have you changed your paid sick leave policy in the last two years?



Has your organization experienced increased employee benefits costs related to COVID-19?



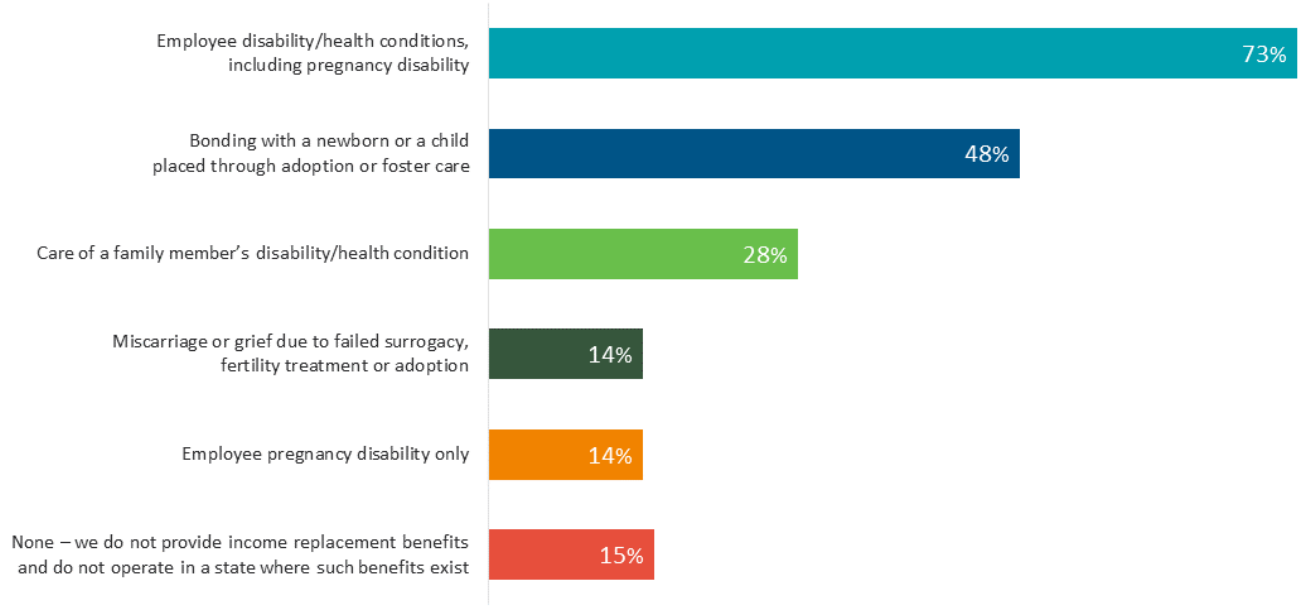
Among HR professionals, it's well known that the largest part of the employee handbook has to do with leave policies. Our survey shows that part of the handbook might be getting even thicker.

More than two-thirds of respondents (68%) said they have expanded their paid sick leave policies during the past two years, with a strong majority of those respondents (70%) doing so due to COVID-19-related legal requirements. Only 1% reduced their sick leave offerings, while the rest (31%) said they made no changes. Given the microscope that larger employers are under in this respect, and the proliferation of different state and local leave laws, it's no surprise that more respondents (77%) from organizations with over 10,000 employees expanded their policies.

As noted in the Workplace Regulation section above, the lack of a federal standard and various state policies (few of which have any overlap) places a substantial burden on employers, who would like to find some consistency in the different jurisdictions in which they operate. New COVID-19-related laws have only exacerbated this longstanding issue. What's more, when an increasing number of employees begin to return to the office – and the threat of potential workplace transmissions grows – employers are likely to receive many more requests for time off and other types of accommodations than they did prior to the pandemic.

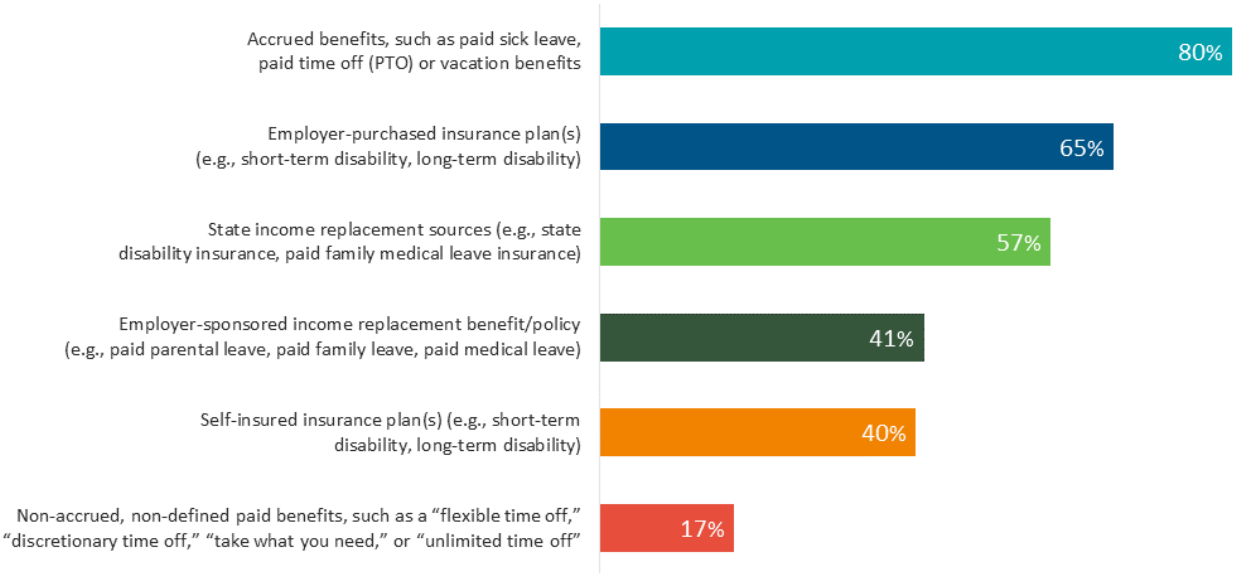
Employee benefits costs also rose for most employers (65%), especially those with over 10,000 employees (83%) and in healthcare (77%) and manufacturing (70%). This tracks not only with the costs associated with changing work models and challenges due to the pandemic, but a talent market in which robust benefits programs are increasingly being used to attract prospective hires.

Does your organization provide employees with income replacement benefits for any of the following types of family and medical leave events? *(Check all that apply)*



Which forms of income replacement does your organization rely upon to provide employees with income during a leave of absence? *(Check all that apply)*

This question was only asked to those whose organizations provide income replacement benefits.



New laws involving wage replacement for family and medical leave events continue to crop up across the country, forcing employers operating in multiple states to track and comply with requirements that come with a great deal of variation. At the same time, many employers are implementing or expanding paid family leave benefits as part of their broader efforts to recruit and retain employees in a challenging labor market.

Our survey finds a strong majority of employers (73%) providing income replacement benefits for employee disability and health conditions (including pregnancy disability), with the figure rising to 86% for organizations with more than 10,000 employees. Nearly 50% of all respondents (and 62% of those from large employers) are offering income replacement benefits for bonding with a newborn or a child placed through adoption or foster care. This is a percentage that can be expected to rise – along with the 14% providing benefits for miscarriage or grief due to failed surrogacy, fertility treatment or adoption – as employers increasingly look to expand benefits related to caregiving and/or mental health.

As for the types of income replacement that organizations rely upon, the data illustrates how companies are integrating employer-sponsored programs with state entitlements. Accrued benefits – such as paid sick leave, paid time off or vacation benefits – emerged as the top form of income replacement, utilized by 80% of respondents. More than half are also relying upon employer-purchased insurance plans (65%) and state income replacement sources (57%).

The 41% relying on employer-sponsored income replacement benefits or policies (*e.g.*, paid parental leave, paid family leave, paid medical leave) is consistent with the focus on parental and family leave in the types of benefits being offered.

Interestingly, 40% of respondents are relying on self-insured insurance plans. This is an avenue that employers are sometimes reluctant to take due to the complexity and risks involved, although it's possible respondents are using self-insured plans only for certain types of benefits (such as short-term, but not long-term, disability).

It's also surprising that 17% are relying on non-accrued, non-defined paid benefits. Given that these policies can become expensive and challenging to manage if employees want to take an extended leave, this percentage could have been expected to be lower.

	Maximum number of weeks of income replacement provided (on average)	Maximum percentage of wage-replacement benefits available (on average)
Employee disability/health conditions, including pregnancy disability	13	75%
Bonding with a newborn or a child placed through adoption or foster care	9	87%
Care of a family member's disability/ health condition	9	80%
Miscarriage or grief due to failed surrogacy, fertility treatment or adoption	8	84%
Employee pregnancy disability only	8	82%

Navigating the shifting landscape for paid family and medical leave benefits continues to present a host of challenges and opportunities for employers. In addition to complying with a growing patchwork of requirements in the various states, counties and cities in which they operate, today's employers are looking to go beyond what the law requires and provide more robust benefits related to caregiving and bereavement to support their employees.

Michelle Barrett Falconer, Co-Chair of Littler's Leaves of Absence and Disability Accommodation Practice Group

Inclusion, Equity and Diversity (IE&D)

What steps has your organization taken in the past year to support your IE&D goals? *(Check all that apply)*

It goes without saying that the pandemic did not affect every worker equally. There are, for instance, nearly 2 million fewer women in the workforce, largely due to the need to care for children and other family members. Several studies have also documented the unequal toll the pandemic has taken on workers from communities of color.

As the pandemic eases – and in the wake of 2020's powerful movement for social justice – it is becoming more important for employers to walk the walk when it comes to advancing IE&D plans and goals.

That 57% of respondents – and 65% of those from companies with over 10,000 employees – are revising recruiting and hiring practices is a promising sign that employers are responding to the new reality created by the pandemic. Previously common elements of job descriptions, such as mandating in-person attendance or being based in a particular city, may no longer be necessary in the new world of work.

Additionally, more than 50% of all respondents (and 68% of those with over 10,000 employees) are providing more IE&D programming and educational resources, while 48% (and 67% of those with over 10,000 employees) are increasing training and professional development opportunities for female and diverse employees.

But true change also requires representation at the top and providing diverse employees with a clear pathway to get there. To that end, 45% (and 57% of those with over 10,000 employees) are hiring or elevating diverse employees into leadership positions.

Other critical initiatives include promoting allyship in the workplace (37% overall, 57% of those with over 10,000 employees); utilizing task forces with employees from varied backgrounds to discuss potential changes or important IE&D issues impacting the workforce (32%, 44%); more clearly defining benchmarks and metrics for measuring success (32%, 53%); increasing social justice efforts (31%, 43%); and expanding and/or evolving family leave policies (26%, 31%).

Employee resource groups, which have broadened of late to include numerous different groups (from LGBTQ+ individuals to veterans to disabled employees and more), are a central facet of many of these initiatives. In fact, since 2020, about 35% of companies have added or expanded their support of such groups.

Though only 8% of respondents said they are providing incentives for employees to participate in IE&D initiatives, it's worth noting that certain financial incentives (*e.g.*, offering managers compensation for hiring diverse employees) might encourage leaders to engage in IE&D efforts for the wrong reasons – while also potentially stigmatizing diverse workers hired through such a process. On the other hand, incentivizing employees to participate in IE&D work and compensating those who drive related efforts can be useful. This is especially true seeing as, historically, those who belong to diverse groups may have been relied upon to do IE&D work without pay.

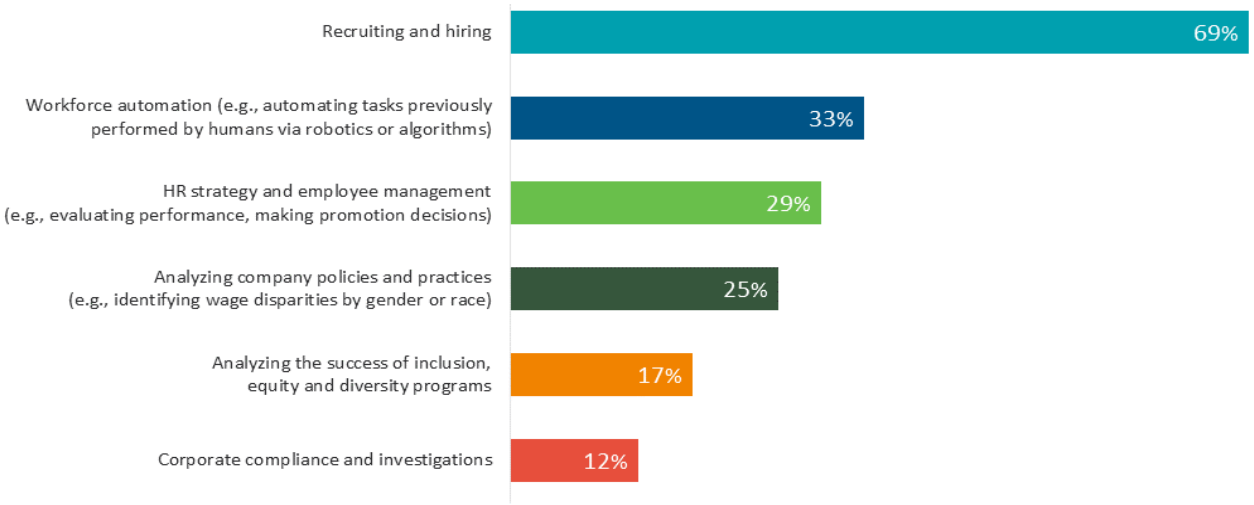
In today's hyper-competitive talent market, employers have to be strategic and creative about getting diverse candidates in the door. Companies will emerge from this difficult period with stronger and more diverse teams if they are willing to think outside of a framework that may have worked in the past. Such strategies will include a reassessment of job descriptions with a goal of differentiating stated 'requirements' from mere conveniences, preferences or well-worn traditions. And hiring is only the first step. To retain diverse employees, companies will have to reexamine their promotional and development systems and practices to ensure that people can see themselves in leadership roles. When it comes to DEI, remember that diversity is easy, inclusion is hard, but equity is even harder.

Cindy-Ann Thomas, Principal at Littler and Co-Chair of Littler's EEO & Diversity Practice Group

AI in HR

In which of the following areas is your organization using artificial intelligence (AI) or data analytics to improve workforce management decisions? *(Check all that apply)*

The below chart excludes data from the 48% of respondents who said their organizations are not using AI or data analytics.



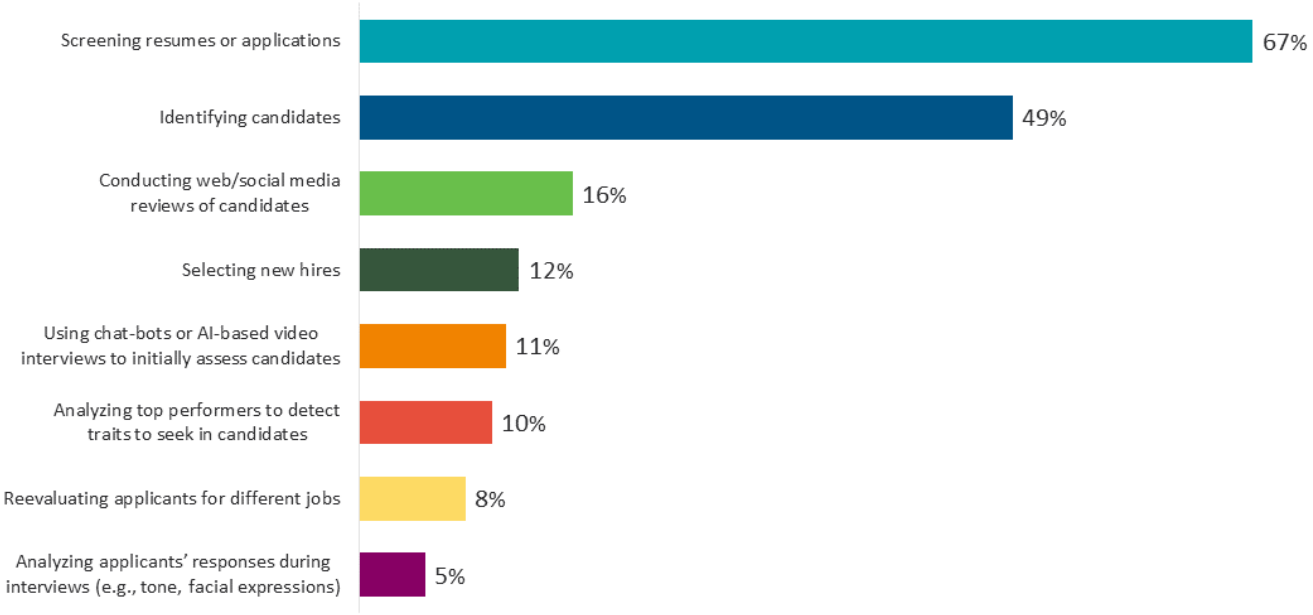
The past decade has seen significant advances in AI and data analytics tools that help improve business operations and boost efficiency.

Among our survey respondents whose organizations are deploying AI and data analytics in workforce management, most are doing so in the pre-employment phase. Nearly 70% of these respondents say they use AI and analytics tools in the recruiting and hiring process, followed by workforce automation at 33%. While a slightly smaller group of respondents (29%) are using AI for HR strategy and employee management, we'll likely continue to see greater movement into these more fundamental aspects of HR as the tools in this area develop further.

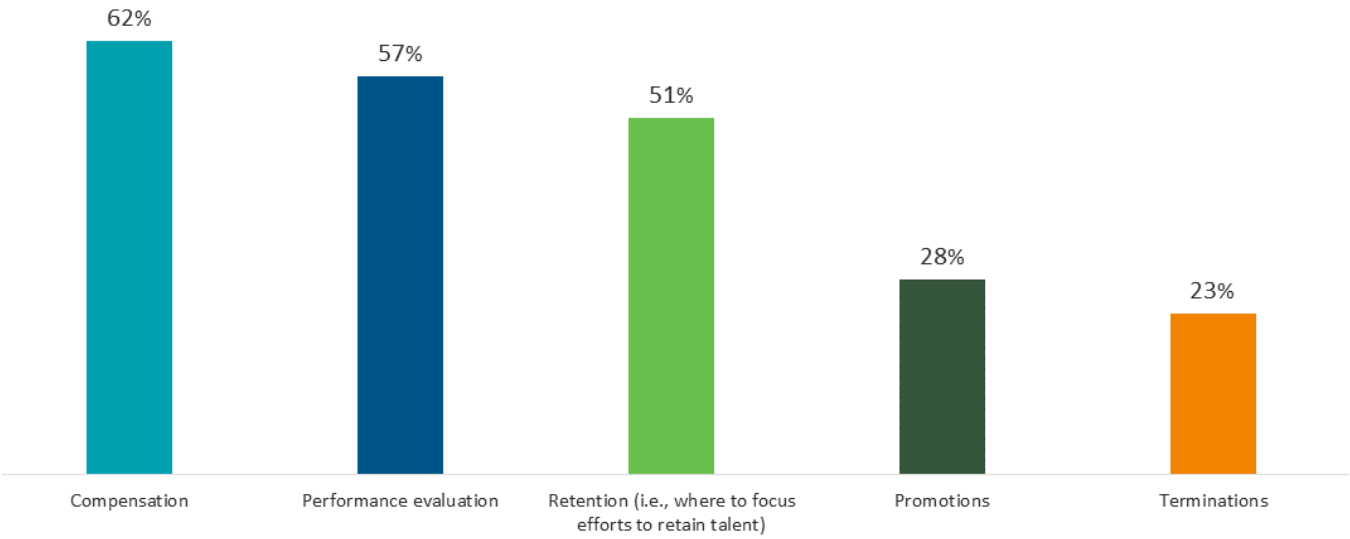
That 48% of respondents say their organizations are not using AI or data analytics to improve workforce management decisions suggests that some of our senior-level respondents may not be fully aware of how these tools are being deployed in HR processes. Indeed, other industry surveys point to greater adoption of AI and analytics tools to streamline and support HR processes. For instance, Mercer's Global Talent Trends 2019 survey – comprised mainly of HR leaders and employees who are more likely to be involved in day-to-day AI operations – found that 83% of U.S. employers use AI in HR decisions. The disparity suggests that the use of this technology could be more widespread than some in-house legal departments and business leaders recognize.

How is your organization using AI/analytics in recruiting and hiring? *(Check all that apply)*

This question was only asked to those whose organizations are using AI/analytics in this way.



In what areas is your organization using AI/data analytics in employee management decisions? *(Check all that apply) This question was only asked to those whose organizations are using AI/analytics in this way.*



When respondents whose organizations use these tools in recruiting and hiring were asked specifically how they do so, 67% said it was to screen resumes or applications – not surprising, considering employers are navigating one of the most competitive job markets in generations. Nearly half of respondents in this group (49%) are using these tools to identify candidates. For example, AI can help employers identify applications that may have been passed over in the human screening process to find qualified candidates for that position, as well as other open jobs.

Our findings illustrate that the use of AI drops off the farther employers get into the recruiting pipeline – where the human component becomes more critical.

When asked how AI and data analytics are used in employee management decisions, respondents using such tools in this way pointed to compensation (62%), performance evaluation (57%) and retention (51%). It's worth noting, however, that most product offerings in this area focus on retention issues, rather than compensation – so respondents who chose the latter option may be relying more on mathematics and algorithms than AI and data analytics.

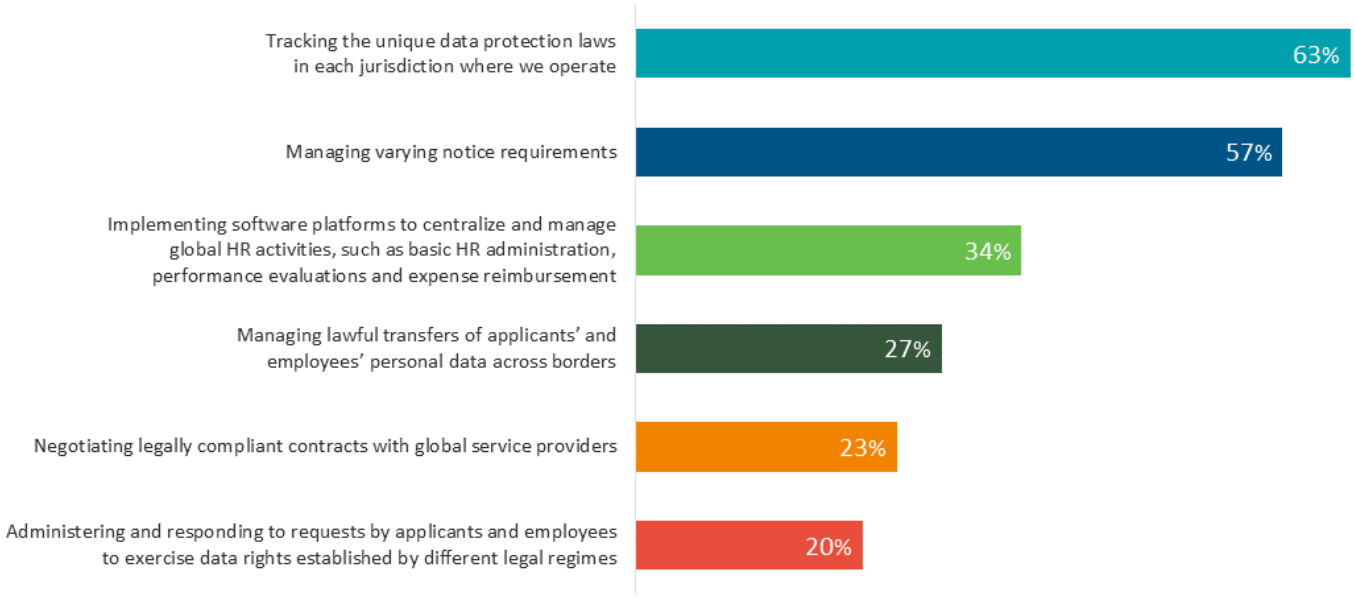
In a tight job market, employers are rightly looking to leverage AI and analytics to broaden their candidate pools, reduce human biases and improve the hiring process. But it's important they don't go all in on these emerging technologies without weighing the opportunities and risks, especially with regard to discrimination, privacy and access concerns. AI and analytics have the potential to revolutionize the hiring and selection process, but employers must deploy these tools with a purpose – and regularly test outcomes to ensure the intended benefits come to fruition.

Marko Mrkonich, Littler shareholder who helps lead the firm's efforts to counsel employers on the use of AI in HR

Data Privacy

Which of the following represent challenges facing your organization in complying with multiple and varying data protection laws in the U.S. and/or globally that apply to human resources data?

(Check all that apply)



Companies continue to face an onslaught of new U.S. and global data protection laws, regulations and landmark decisions, including varying and increasingly stringent rules for handling HR data.

Our survey finds employers grappling with a variety of challenges as they work to develop approaches that can be applied across their locations. Chief among them is just tracking the unique data protection laws in each jurisdiction in which they operate – a concern for 63% of respondents and 80% of those with more than 10,000 employees. The need to manage varying notice requirements followed closely as a concern for 57% of all respondents (and 70% of large employers).

Roughly one-third of respondents are challenged with implementing software platforms to centralize and manage global HR activities (34%) and managing lawful transfers of applicants' and employees' personal data across borders (27%). The latter figure rose to 45% for organizations with more than 10,000 employees, showcasing the complexity of this evolving issue.

New data protection laws are being enacted at a relentless pace, while existing data protection laws continue to be updated and amended. Further complicating matters for multinational companies, global data protection laws can vary materially in the details in light of local customs and business practices, even though they tend to share a common thread. To effectively manage a global workforce in the digital age and comply with expanding data protection obligations, employers must reevaluate – and in some cases implement entirely new – policies and procedures for handling human resources data.

Philip Gordon, Co-Chair of Littler's Workplace Privacy and Data Security Practice Group

Methodology and Demographics

From March 8-25, 2022, 1,275 professionals from a variety of industries completed The Littler® Annual Employer Survey via an online survey tool.

Respondents were based across the U.S. and included:

- Human resources professionals (54%)
- General counsel/in-house attorneys (40%)
- C-suite executives or other professionals (6%)

Companies represented were of a variety of sizes:

- More than 10,000 employees (19%)
- 5,001 to 10,000 employees (7%)
- 1,001 to 5,000 employees (19%)
- 501 to 1,000 employees (12%)
- 101 to 500 employees (30%)
- 1 to 100 employees (13%)