

A **ROUNDTABLE** DISCUSSION**LABOR AND EMPLOYMENT**

Competing for talent, reacting to new compliance laws should be top priorities for companies.

The battle to attract and keep top talent is likely to continue as forecasters predict that unemployment will remain low for the foreseeable future. At the same time, hybrid workforces and new laws aimed at increasing employment equity have made the labor and employment market even more complex. Three employment, labor and HR executives spoke with **Crain's Content Studio** about the current state of the employment market and how companies can compete in a tight hiring environment.

What is the top thing that Illinois employers should be focusing on now from a compliance perspective?

Heather Becker: Ensuring that their policies and procedures are up to date with the ever-changing federal, state and local laws, and then ensuring that the workforce is aware of the policies and procedures through training at all levels. For example, employers within the City of Chicago must ensure that their sexual harassment policies are compliant with the amended human rights ordinance. While employers in Illinois should already be providing sexual harassment training on an annual basis, the amended Chicago ordinance also requires one hour of bystander training that was not previously required.

Laura Friedel: For employers in Chicago, the top priority must be complying with the new anti-harassment training requirements. These new requirements — which must be met by June 30, 2023, and then each year thereafter — include two hours of training for employees, plus a third hour of training for managers and supervisors. For non-Chicago Illinois employers with 100+ employees, the top priority should

Pay Act. The Equal Pay Act requires that employees of a different race or sex, who perform similar job duties, not receive a lower wage. The updated Act now requires certain private employers to apply for an Equal Pay Registration Certificate by March 2024, similar to the EEO1 annual certification process. Therefore, employers should focus on reviewing current policies and practices prior to filing for the certificate.

What should employers be doing to get in front of Illinois' new pay transparency requirements in the Equal Pay Act?

Becker: Employers should ensure that the Illinois Department of Labor (IDOL) has current contact information to ensure that future IDOL communications are received by someone in the business in a timely manner. Employers should also audit their employee rosters, wage data and pay-related policies and procedures to ensure that they can easily compile the information needed and provide the necessary compliance statements.

Pettis: Employers should be reviewing current pay practices and establish a compensation plan committed to equitable pay



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employees go through the exercise of putting together a draft Equal Pay Registration Certificate application. Going through this exercise allows

employers to make sure they have good answers to questions around how compensation is determined and are able to certify that there aren't

pay disparities between male and female or non-minority and minority employees. And if the company discovers any concerning data or

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be getting prepared to submit their Equal Pay Registration Certificate applications which will be due sometime before March 2024. This application requires certifications of compliance, statements of how pay is determined and information regarding compensation for employees broken down by race and gender, among other requirements.

Nicole Pettis: A significant compliance change that Illinois employers should focus on this year is the amendment to the Illinois Equal

and transparency in pay. This comprehensive plan not only focuses on pay structure, but also on job classifications and job descriptions. When compensation is clearly defined by the employee's job duties, it helps to remove ambiguity in pay practices. If current compensation plans factor in merit or seniority, that should be appropriately documented and clearly communicated to employees.

Friedel: I recommend that all Illinois employers with 100+

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Meet Heather Becker:

For more than 15 years practicing at Laner Muchin, Heather has represented employers before federal and state courts and administrative agencies in all types of employment litigation. She regularly defends employers in matters including discrimination, harassment and retaliation litigation, wage and hour claims, civil rights and constitutional claims, whistleblower claims, and employment contract disputes involving trade secrets, non-competes and restrictive covenants. Heather provides valuable day-to-day employment counseling to help clients develop effective policies and resolve complex employment disputes before they develop into costly litigation.

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other issues, having done this in advance of the Department of Labor's notice that the application is due hopefully will provide the time to get things in shape before the application is submitted.

Have employee desires and priorities shifted since the onset of the pandemic? If so, how can employers respond to those shifts?

Becker: Employees desire flexibility. Many employees enjoyed and became accustomed to having the ability to work from home and avoid the long, daily commute during the heart of the pandemic. For businesses that were new to the concept of remote work during the pandemic, many saw that their employees had the ability to be just as productive working from home as they could be working in the office. While there are benefits to returning to the office, many employees are looking for employer policies that allow more flexibility in deciding when and where to work.

Friedel: We definitely have seen a shift in some industries around how much time employees want to devote to work. Pushing employees

to devote more time to work than they are interested in spending is a sure-fire way to get them to look elsewhere, which is problematic for companies given the current labor market. My suggestion here is not to focus on whether the employee meets standard expectations, but rather, to consider whether there is common ground to be found. This may mean offering reduced schedule arrangements, alternative tracks or something else.

Pettis: I think that for a lot of employees, the pandemic became a time of reflection to determine what truly makes them happy and what makes them feel valued. As a result, the desire for work-life balance has increased immensely. Post-pandemic, when recruiting new employees, I am almost always asked about the availability of remote/hybrid work schedules and how our company prioritizes work-life balance. When I hear things like this, I then think about how we can make sure we, as the employer, can support employees while they are working remotely. Simple things like making sure employees have equitable, quality resources in their home offices so that they can work effectively at home.

For employers looking to retain their top talent and not fall victim to the Great Resignation, what can they do to strengthen their workforce?

Becker: Employers who have not fallen victim to the Great Resignation seem to be the ones who are most aware of and responsive to the needs of the changing workforce. These tend to be the employers who offer competitive compensation and benefits, allow for flexibility in work arrangements and help their employees stay engaged through

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— LAURA FRIEDEL, LEVENFELD PEARLSTEIN

strong mentoring relationships, opportunities for career advancement and meaningful work assignments.

Friedel: Research shows that the key is making sure employees feel that they are a part of something

bigger and that they are valued. There are certainly “soft” things that can be done in this regard, but employers should consider different compensation arrangements that help put the company’s proverbial “money where its mouth is.” Some examples are a bonus pool that’s based on profitability, a phantom equity program that allows employees to share in the company’s growth, or a long-term bonus that would allow the employee to share in sale proceeds if the company is sold. There are a number of potential issues in these sorts of plans, so it’s important that they be documented in writing

with clear terms and crafted with the assistance of an attorney who understands the tax requirements for deferred compensation arrangements.

Pettis: Employers can focus on strategies that strengthen the employee as a whole, implementing policies and benefits that consider employees’ total well-being. For example, offering training, educational resources and opportunities for advancement are retention strategies many employers embrace now. Additionally, employers should be having conversations with employees about engagement to understand what matters to them. I think it goes a long way when employees feel heard, and they know that their opinions and ideas are being considered when making decisions.

What types of incentives are employers offering to potential new hires?

Friedel: Employees coming on board in the Fall of 2022 are seeing meaningful signing bonuses and home office allowances, in addition to meaningful base compensation and bonus opportunities and generous paid time off policies. For those walking away from current positions, it’s also not uncommon to see severance pay guarantees if they are terminated without cause.

Pettis: Due to the competitive job market, employers must be creative with incentives for new employees. Sign-on bonuses have become increasingly popular. I find it helpful to focus on incentives that increase an employee’s ability for work-life balance. Offering additional vacation and flexible work hours, competitive

wages and bonuses and offering benefits and perks that go beyond traditional benefits plans are all great incentives. At TAWANI, we offer an array of benefits, including sponsoring weekly lunches for anyone who is in the office, a generous retirement plan, continuing education, a monthly technology stipend and a one-time bike allowance.

What trends are you seeing with respect to paid time off?

Becker: The pandemic has brought a greater focus on the importance of maintaining physical and

mental health. Some employers are expanding paid leave policies or offering unlimited PTO as a means to help ensure employees take time off from work when sick and have the ability to care for family members in need. More robust paid time off policies may also give employers an edge at attracting top talent in our competitive job market.

Friedel: We are seeing an increase in employers moving to flexible time off (FTO) policies, where employees can take as much time off as they want so long as they do the work that needs to get done. This move is in response to the difficulty of tracking paid time off for remote employees. With the move to FTO, companies get away from the need to track time off (though it’s still necessary to track working time for overtime purposes) and because FTO doesn’t accrue, in most cases, employers get the added benefit of not having to carry a liability on their balance sheet for vacation time.

Pettis: A lot of companies are being creative with PTO policies. I have seen companies do away with traditional paid time off policies, implementing policies with unlimited PTO. We implemented self-care days. Full-time employees are allowed one self-care day per month that time doesn’t count against employees’ standard PTO and sick accruals. Policies like this are great for boosting morale and increasing employee satisfaction.

Are there ways in which employers can improve their recruitment processes and procedures to help fill vacancies more quickly?

Logic with Passion



Meet Laura Friedel

Laura Friedel is a partner and chair of LP’s Employment & Executive Compensation Group. Her practice focuses on developing employment documents, policies, and practices that improve employee relations while protecting the company’s investment in its people and minimizing legal risk. Additionally, Laura is a go-to attorney on Covid-related employment matters, and her unique approach to supporting clients through the M&A process allows them to preserve and maximize the value of human capital involved with the transaction. As a leader in the firm, Laura supports her colleagues in reaching personal and professional goals and building relationships while also serving as a resource to firm attorneys on gender-related issues and a champion for diversity.

Legal counsel is what we do. But *why* we do it is something different entirely. Every member of the LP team shares a deeply felt responsibility to our clients, their employees, and the communities they serve. Together, we’re here to help them achieve amazing things.



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Becker: Speed is key when looking to hire top talent. Solid candidates likely have a number of firms expressing interest. Delays and inefficiencies in the recruitment process increase the likelihood of losing out on a promising candidate. While the candidate is waiting for you to make an offer or set up another round of interviews, he or she is likely receiving offers from competitors.

Pettis: A few key actions employees can take is to post clear, straightforward job postings. A job posting should highlight the most attractive features of your company and the critical components of the position. Another way is to widen your search. However, don't solely rely on posting on job boards. We have found that some of our best candidates came from employee referrals, so we implemented an employee referral bonus.

For organizations that recruit and hire new talent, what should they be doing to ensure that those employees stay and grow with the organization?

Becker: Mentorship and inclusion are two important aspects of ensuring that new employees become invested in the organization. Mentors provide new employees the knowledge, advice and resources needed to acclimate to a new workplace and offer an immediate connection to the workforce, particularly in a remote or hybrid working environment.

Pettis: It is essential to recognize that onboarding goes beyond a new hire's first week at the company. Employers should check in regularly with new hires to provide personalized support, ask for feedback on the company and their new positions and determine if any tools are needed to help

are more willing to try creative ways to address the situation that allows for the employee to succeed. Some job performance deficiencies are easily cured by additional training or improvements in communication. Other solutions may take more work to achieve such as shifts in job assignments, restructuring the team or looking for a position within the organization that is a better fit for the employee. Assuming that the performance deficiencies are repairable, keeping an employee that the employer has already invested time and effort in is typically desired over starting from scratch with a new hire.

Friedel: The current labor shortage is leading employers to give employees more chances than they might have been given in the past — often in the form of additional warnings or more training before making the decision to terminate. I also have seen an uptick in companies paying for coaching for managers who need help to succeed.

What should employers consider when deciding whether to have a remote, hybrid or in-person workplace?

Becker: Employers should consider their culture and what will work best for their business. For example, is corroboration necessary to the business, and are employees able to collaborate effectively when not together in the same space? Employees also need to consider the desires of their employees in order to keep employee satisfaction high and retain top talent.

Friedel: In addition to the business considerations, any business considering a remote workforce needs to understand the additional legal requirements that apply with a remote workforce. This

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them be successful in their roles. Also, actively provide employees with opportunities for training and development to prepare them to grow with the organization.

Has the Great Resignation changed the way in which employers address job performance deficiencies with existing employees?

Becker: With the tight job market, employees are not as easily replaceable as they once may have been viewed. Which means that, when job performance issues arise, employers

means that if you have a remote workforce, you need to comply with the employment (and tax) laws in each location where you have a remote employee. We also are seeing an uptick in requirements for job postings that can be performed in locations with strict pay transparency requirements. Colorado already requires that compensation information be included in any posting for a job that can be performed in that state, and New York City has a similar requirement going into effect in November. If you're going to allow jobs to be performed remotely, you

ABOUT THE PANELISTS



HEATHER BECKER is a partner at Laner Muchin and represents public and private sector employers in all facets of employment litigation and counseling. Becker's counseling practice emphasizes a proactive approach to employee relations to minimize the risk of litigation through practical policies and procedures; training; and meaningful employee engagement. Becker regularly handles litigation involving the laws that prohibit discrimination, harassment and retaliation in the workplace; constitutional claims; employment-based torts; wage payment claims and restrictive covenant disputes.



LAURA FRIEDEL is a partner and chair of Levenfeld Pearlstein's Employment & Executive Compensation Group. Friedel develops employment documents, policies and practices that improve employee relations. When disputes arise, she works with clients to determine their business goals relating to the claim and then targets the litigation, arbitration or settlement discussions to meet those goals. Friedel also represents companies before federal and state courts and agencies in employment litigation — discrimination, harassment and retaliation litigation; wage payment claims; whistleblower complaints and restrictive covenant disputes.



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need to be prepared to provide this information.

Pettis: There are logistical aspects to consider, like determining if employees have a safe, confidential

workplace and establishing upfront what equipment the company plans to provide for the remote space. There are also other aspects to consider, such as time management for non-exempt employees who are working

remotely and maintaining employee engagement outside of the office. Ultimately, employers must decide which situation fits their business needs and evaluate each option based on an employee's position.



TAWANI Enterprises provides a diverse, community-minded workplace that encourages personal and professional growth. Along with newly adopted remote, hybrid and office work models, we encourage continuing education, provide competitive paid time off and additional monthly self-care days, offer wellness benefits, and a generous retirement plan. TAWANI is committed to providing opportunities that allow all team members to succeed.

