

# Working from Home Is Here to Stay: Best Practices Every Employer Needs to Know



PRESENTED BY

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# TOPICS: BUSINESS & LEGAL PERSPECTIVES on WFH

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1. Current status of Work From Home (“WFH”)
2. Return to Before Covid (“BC”)?
3. Required In Person Work (“IPW”)?
4. Legal Compliance
5. Company Policies, Return to Office (“RTO”) Plan
6. Productivity/Performance/Mental Health
7. Culture/Community



# Current Status of Work From Home



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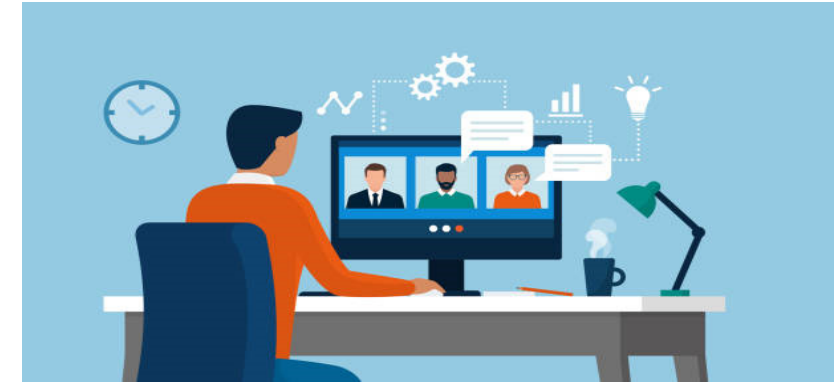


# Widespread WFH is still the norm



- About a quarter of employees across the country are going into offices these days, according to Kastle Systems, an office security firm that gets data from 3,600 buildings in the United States.
- There are big regional differences. In large cities in Texas, more than a third of workers are back, while the New York, San Francisco and Chicago areas remain below 20 percent.
- More than 55 percent of people surveyed by the consulting firm PwC late last year said they would prefer to work remotely at least three days a week after the pandemic recedes. But their bosses appear to have somewhat different preferences — 68 percent of employers said they believed employees needed to be in the office at least three days a week to maintain corporate culture.

# Widespread WFH is still the norm



- In house counsel perspective?
- An informal poll of local in-house counsel last week found that most who have been able to have people work from home are beginning to plan for voluntary Return to Office for local employees beginning in June due to the expectation that employees who want to be vaccinated by then can be. Many are planning to have hybrid WFH/ work in the office going forward.

# When will Employees Return to the Office?

Heightened pressure from employees/management

“Return to office” (try not to say “return to work,” for employees who’ve been working remotely)

According to News Sources:

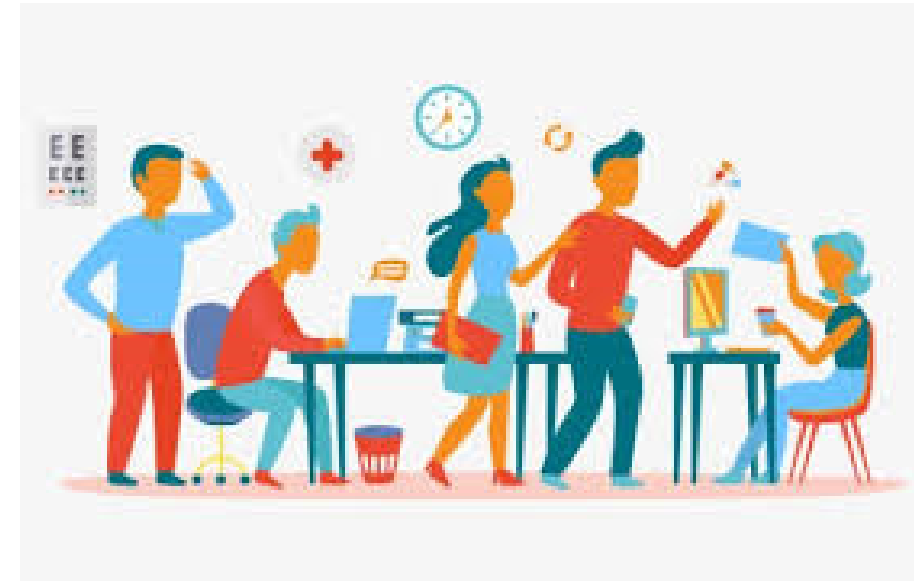
- Wells Fargo will continue to work remotely through **at least May 1**.
- LendingTree is waiting for the end of the school year.
- Duke Energy will bring some employees back in **June**, and most of the 6,000 people at its headquarters in **September**, when schools reopen.
- Amazon : “our plan is to return to an office-centric culture...**early fall**”
- Never: Facebook, Twitter, Square, Slack, Shopify, Zillow



# Major considerations:

## Safety

- CDC Guidance / OSHA Standards/ Local Government Guidance or Requirements (moving targets)
- Vaccine saturation among employee population / population at large, whether to mandate for Return to Office/Business Travel
- Limitations on number of people permitted in office per day?
- Will people be in offices? Spaced apart cubicles? Reservation system?
- Will face coverings be required? Will the employer provide them/permit employees to wear their own?





# Major considerations (cont'd):

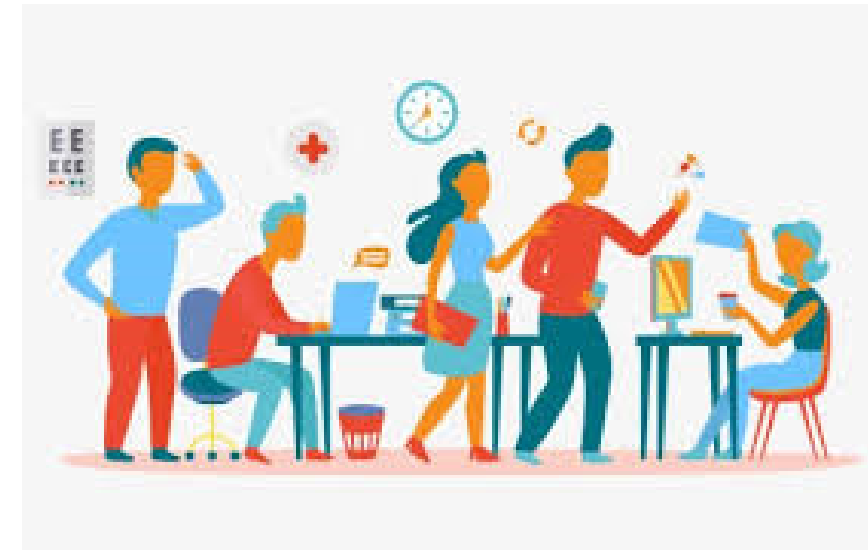
- **Safety**

- Will in-person meetings be permitted? What limitations?
- Will convenience stations (coffee, water, etc.), cafes be open? How many people can be in a restroom at one time? Elevator use?
- Will visitors be allowed? What requirements will visitors be subject to?
- What are the procedures if someone who has been in the office tests positive for COVID?



# Major considerations (cont'd):

- **Costs/Administrative Burdens**
  - Compliance tracking while complying with HIPAA/data privacy requirements
  - Cleaning, disinfecting
  - New OSHA airborne standard expected any day (e.g., HVAC req'ts)
- **Productivity** - Type of work – productivity at home, need for in person collaboration, Zoom fatigue
- **Availability** - Childcare, Schools, Senior Centers re-opening



# Major considerations (cont'd):

- **Culture/Socialization/Mental Health**
  - Isolation, distractions and zoom meetings are taking a toll on mental health
  - How do entry-level workers get socialized into the culture
- **Employee/Management Preferences**
  - Many managers prefer to have the greater control of in person direct reports
  - Personality differences
  - Many employees have become accustomed to the conveniences of WFH





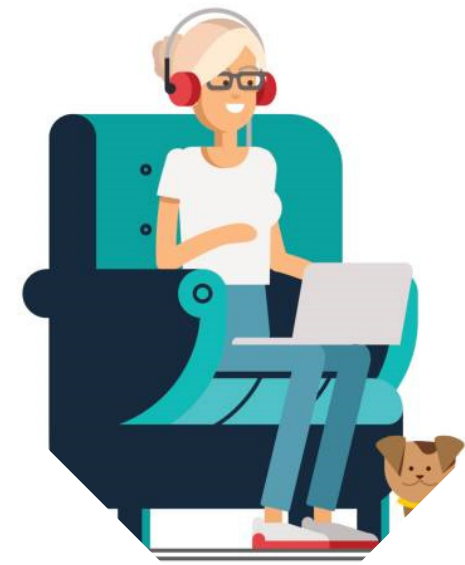
# Should we Expect to Return to BC (Before Covid)?

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# Some changes are likely to continue

- Demand for portable devices, remote access to resources
- Acknowledgement of the intersections of work and life
- Expectation for in-person appearance at work, meetings, events has changed
  - Video/telephone attendance has been tested and normalized
    - allows broader, more convenient, less costly attendance
  - High priority for many employees going forward



# Will offices still be relevant?

- Nearly all projections anticipate a more remote workforce post-Covid.
- A lot of demand for WFH in some industries, especially technology
  - Some tech cos now have a “Director of Remote Work”
- Some people have to be on site / Some people want to be on site
- A lot of research out there:
  - Sustainability of hybrid models: : will employers pay for two set ups, one at home and one at office? Continued use of Zoom meetings so all employees are on equal footing?
  - isolation at WFH







# Can In Person Work Be Required?

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# Accommodations

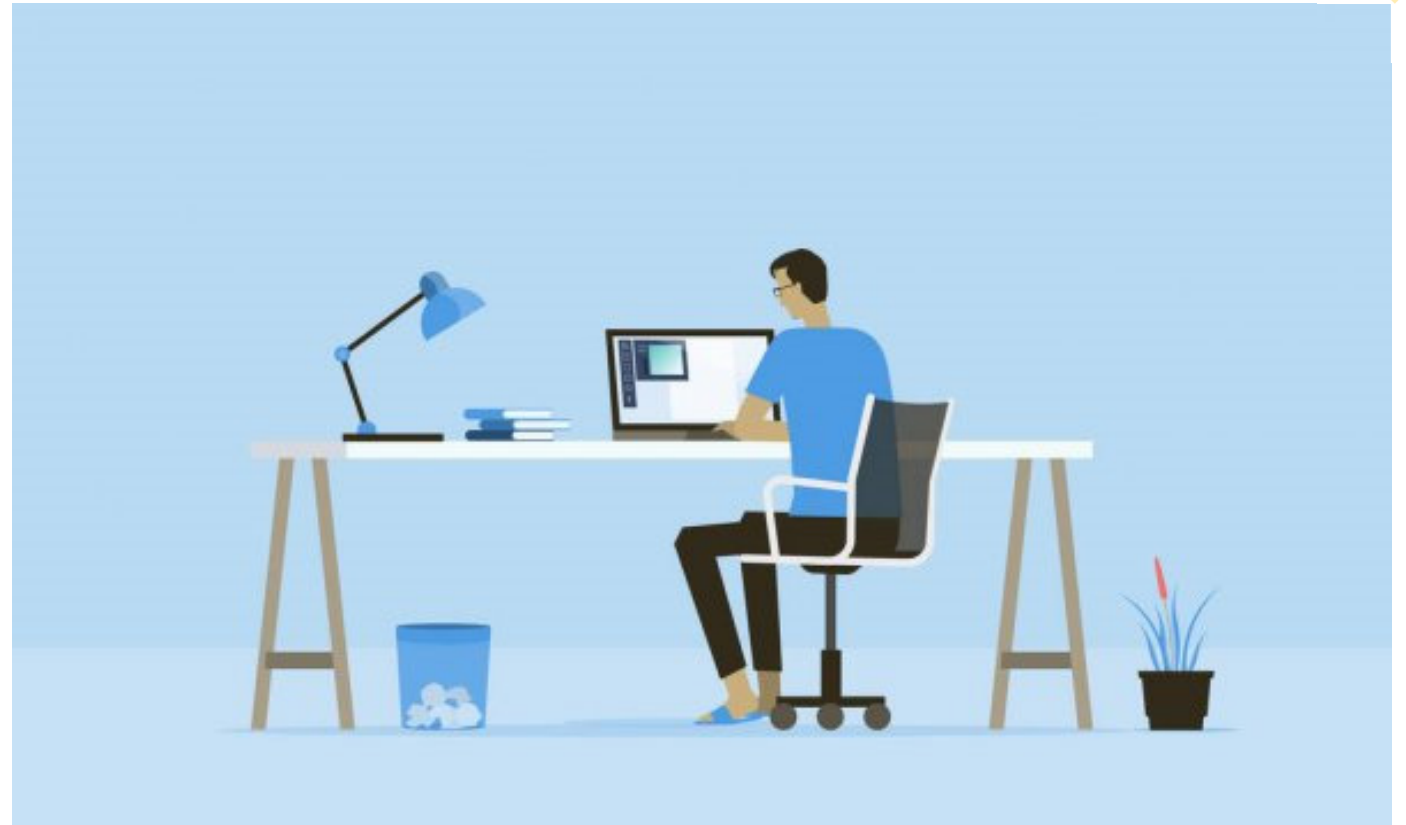
- Sincerely held religious belief
- ADA covered disability
- CDC published high risk conditions
- Care for others who are sick or high risk





# Distinctions in IPW Req't among employees

- Distinctions based on roles, type of workplace, local jurisdiction
- Some people have to be on site
  - people who don't often are higher paid so there is a dichotomy there

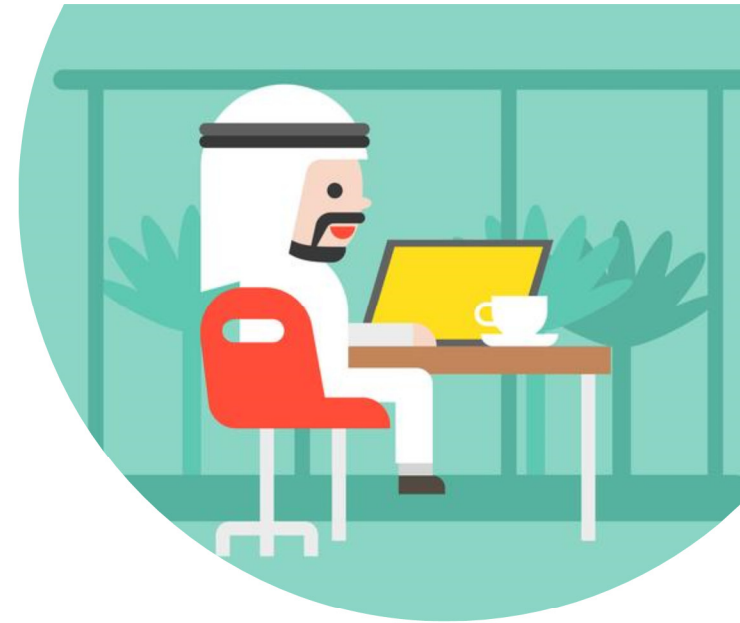


# Legal Compliance



# Where is Home in “Work from Home”?

- Applicable laws – geography matters
  - usually the law of the state/country where the work is performed, regardless of how temporary,
  - But there are exceptions
  - Best Practice: comply with the law that benefits the employee most
- Audit of locations/compliance
- Jurisdictions outside of the U.S. typically impose stringent requirements on employers to ensure employees working from home permanently have safe workplaces, including providing equipment, expense reimbursements, and regular safety checks by a third party



# Wages & Hours, Workplace Safety, Oh my!

- Wages and Hours: FLSA, NCWHA (other state wage laws)
  - Recording of worktime
    - WFH blurs the lines between work and not work
- OSHA/Worker's Compensation: Workplace Safety
  - OSHA's General Duty Clause: Provide Safe work environment
  - Worker's Comp injury or not
  - Reporting obligations



# Company Policies, Return to Office Plans



# What to Include in a “Flexible Work Policy”

- Effective Dates of the policy
- Who is eligible and how to apply
- Other Company policies that apply (discussed next slide)
- Performance expectations
- Approved Work Locations – will this be a WFH policy or a Remote Work Policy?
- Designated Workspace/Equipment

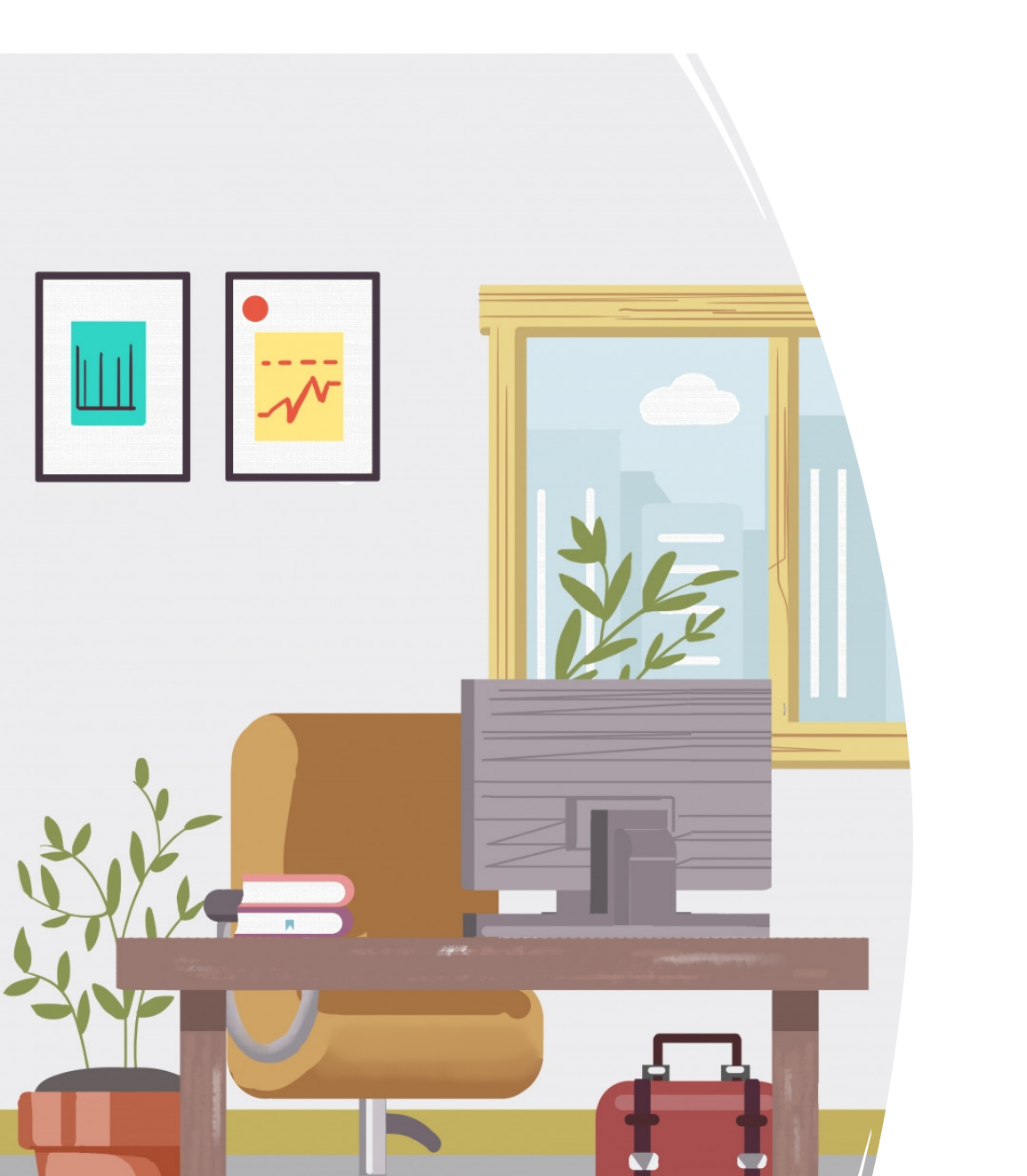


# Other Policies that apply to WFH

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- Work Schedules, attendance, call in policies
- Recording of work time
- Workplace safety, OSHA compliance, worker's compensation
- Data Security
- Code of ethics, conduct, discrimination, harassment





# What to include in a Return-to-Office Plan

- Actions the employer has taken to mitigate risk of exposure to COVID
- Projected return dates and process
- COVID protocols that will apply and any exceptions





## What to include in a Return-to-Office Plan (cont'd)

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- What will employees be required to do to return to office? Health attestation? Proof of vaccination? Temperature check?
- Employee commitment to each other for office safety
- Is WFH available, to whom, and how to apply for it

# Productivity, Performance, Mental Health

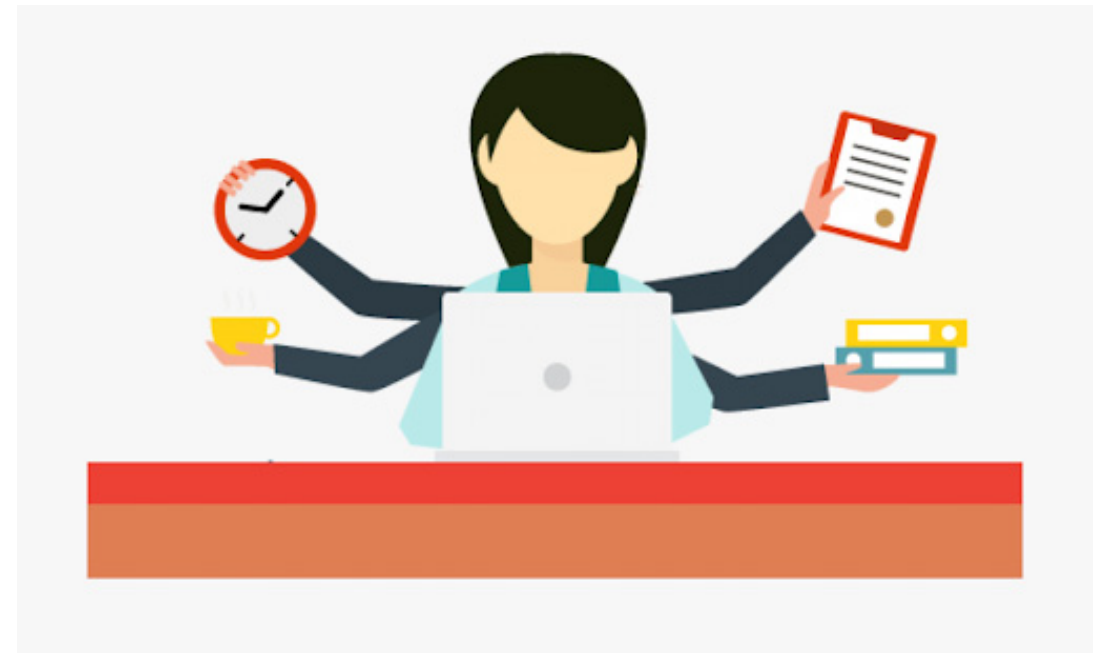
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# Productivity/Performance Management

- Establish expectations and follow up on them consistently
  - Address deficiencies timely and persistently
  - Consider a leader-supported declaration of organizational expectations related to remote work (e.g., IBM's "work from home pledge")
- Recurring issues
  - Showing up (or not)
  - Distractions that impact work
  - Not asking for help
  - Professionalism



# Mental Health

- COVID has taken a toll on mental health, and we are seeing its impact
  - Requests for FMLA/ADA Leave have skyrocketed
  - Some employees are over-working, some are unable to accomplish tasks
- What can Employers do to help?
  - Coach employees to effectively manage competing priorities of work and life
  - Create a sense of psychological safety
  - EAP Programs
  - Time off to get a vaccine
  - Group activities
  - Send gifts, pay bonuses, provide extra time off: LinkedIn shut down for a week to help address burnout





# Culture/ Community

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# Culture/Community

- COVID has taken a toll on company culture and community
- Traditional methods of connection and engagement have been stymied



# Q&A



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