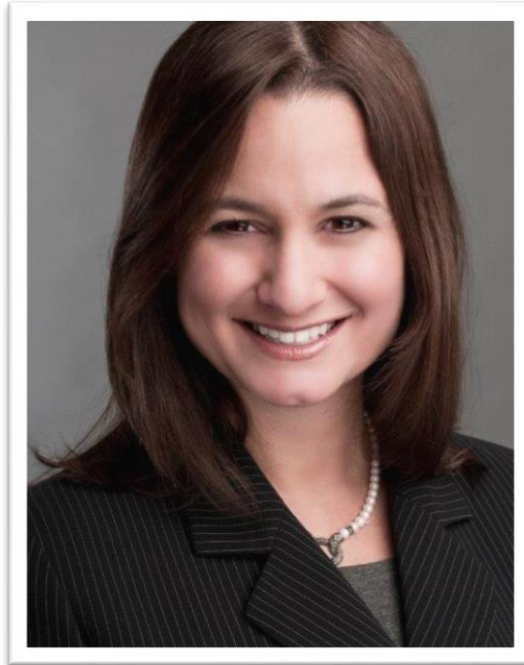




# Top HR Strategic and Compliance Challenges for 2020

January | 2020



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Beth P. Zoller, JD, Legal Editor



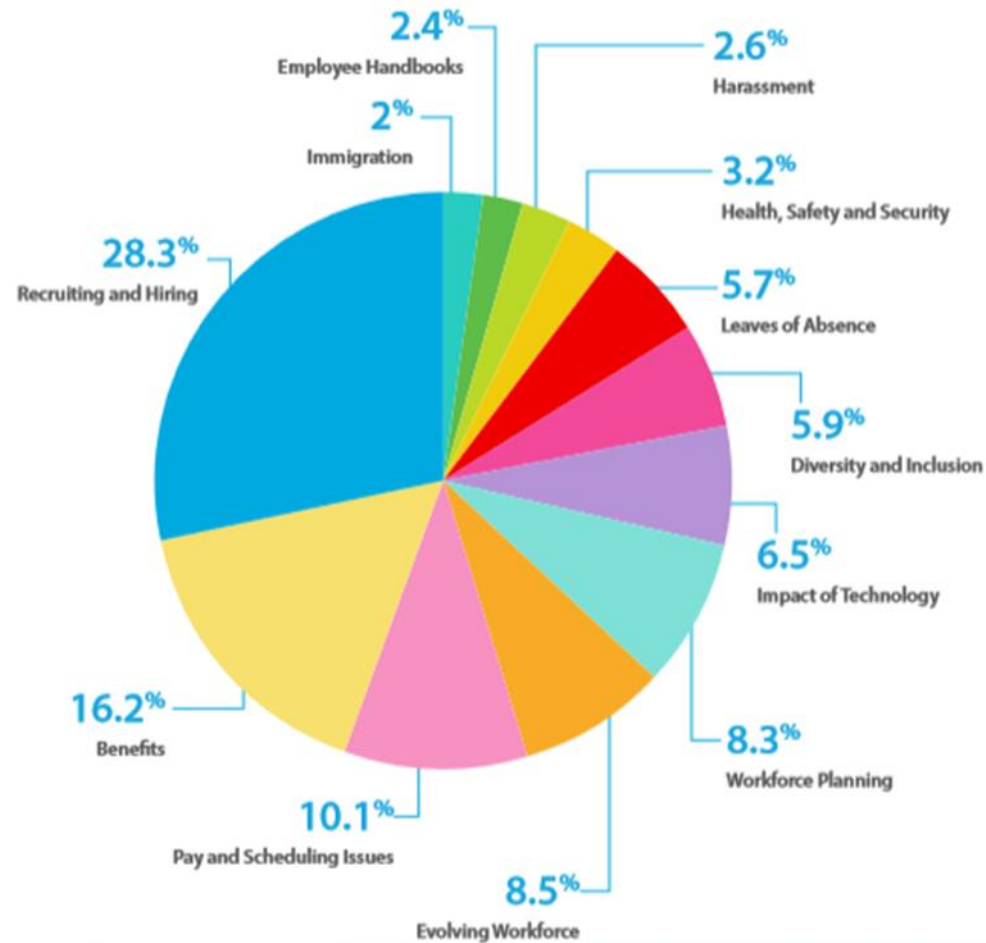
# XpertHR Top Challenges Survey

- Conducted October 2019
- 701 organizations participated
- Private employers, public employers and non-profits
- Small, medium and large organizations in all geographic areas
- Gain insight into strategic and compliance challenges
- Compare challenges YOY





From the 12 issues expected to be the most challenging in 2020, respondents ranked this order:





# Strategic versus Compliance Challenges

## Strategic Challenges

- Understand societal, cultural and technological changes create employer challenges
- Connect HR strategy to business strategy, goals and priorities
- Recruit and hire with changing workforce demographics
- Ensure talent acquisition, performance management, training, compensation, benefits, and safety and security align
- Utilize analytics to track progress

## Compliance Challenges

- Shift from traditional HR responsibilities to comply with legal changes
- Comply with various federal, state and local laws and regulations
- Recognize risks of noncompliance
- Keep pace with laws and compliance trends



# Strategic Challenge #1: Recruiting and Hiring

## Survey Results and YOY Comparison

**28.4% rank  
recruiting  
and hiring as  
Number 1  
challenge**

**50.9% extremely  
challenged by  
finding high  
quality applicants**

**22.7% → 2017**

**28.8% → 2018**

**32.6% → 2019**

**20.6% extremely  
challenged by  
eliminating  
unconscious bias  
during recruiting**

**11.6% → 2018**

**14.1% → 2019**



# Strategic Challenge #1: Recruiting and Hiring

## Survey Results and YOY Comparison

**18.8% extremely challenged by aligning talent acquisition strategy with business objectives**

11.7% → 2017  
9.8% → 2018  
8.1% → 2019

**17.1% extremely challenged by hiring a diverse workforce**

4.9% → 2017  
7.4% → 2018  
9.5% → 2019

**14.4% extremely challenged by predictive analytics and AI in connection with recruiting**

9.6% → 2018  
9.9% → 2019



# Strategic Challenge #1: Recruiting and Hiring

## **Consider Changing Demographics and Workforce Demands**

### **Create a Comprehensive Recruiting Strategy**

- Who/how/where/when will recruit and interview
- Tools/methods to use, different strategies/different positions
- Background screenings
- Predictive analytics

### **Connect Talent Acquisition to Business Goals**

- Right people, right jobs, right cost
- Conduct gap analysis to create action plan
- Compare current state v. future workforce needs
- Evaluate what filled v. what need to fill

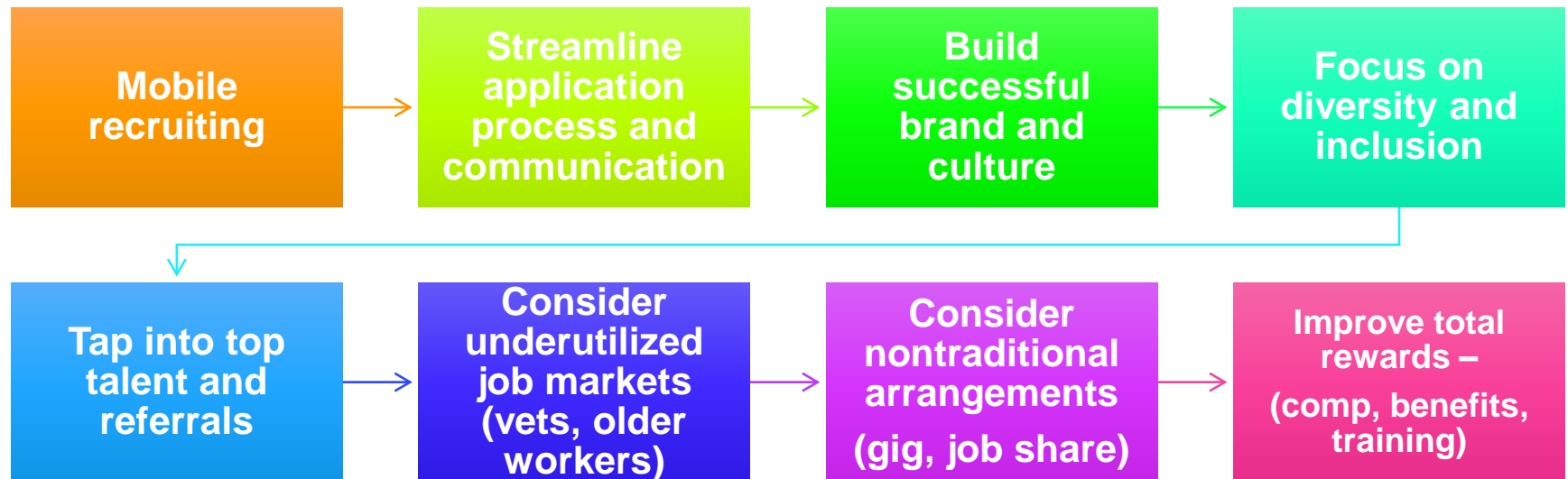






# Strategic Challenge #1: Recruiting and Hiring

## Find High Quality Applicants





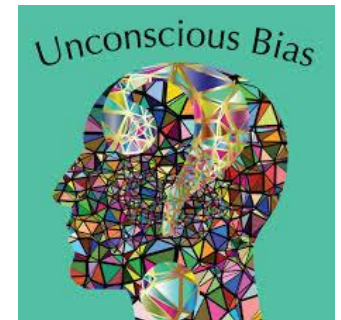
# Strategic Challenge #1: Recruiting and Hiring

## Minimize Unconscious Bias

- Provide fair/equal chance - evaluate merit/skills/qualifications
- Interview by diverse panel
- Utilize software/applications/AI
- Avoid stereotyping/steering

## Utilize Predictive Analytics

- Review retention rates and apply to hiring decisions
- Track cost per hire and time/money spent to recruit
- Evaluate time to fill position, who leaves and why
- Identify which hiring source gives best ROI





# Strategic Challenge #2: Workforce Planning

## Survey Results and YOY Comparison

**8.3% rank  
workforce  
planning  
as  
Number 1  
challenge**

**34%  
extremely  
challenged by  
employee  
engagement,  
morale and  
satisfaction**

**14.5% → 2017  
19.7% → 2018  
18.5% → 2019**

**31.2%  
extremely  
challenged by  
employee  
retention**

**16.4% → 2017  
17.8% → 2018  
20.3% → 2019**

**30.4%  
extremely  
challenged by  
creating a  
succession  
plan**

**16.5% → 2018  
19.4% → 2019**



# Strategic Challenge #2: Workforce Planning

## Survey Results and YOY Comparison

**27% extremely  
challenged by  
training and  
upskilling current  
employees**

**12.5% → 2018**

**15.5% → 2019**

**25.5% extremely  
challenged by  
managing  
performance and  
professional  
development  
opportunities**

**11.6% → 2018**

**13.8% → 2019**

**16.9% extremely  
challenged by  
aligning  
compensation  
strategies with  
business objectives**

**8.2% → 2017**

**10.2% → 2018**

**11.3% → 2019**



# Strategic Challenge #2: Workforce Planning

## Be Proactive and Address Strategic Business Needs

### Training and Professional Development Opportunities

- Provide training/mentoring/professional development opportunities
- Support current roles and advancement
- Identify peak performers → provide opportunities, leadership roles and responsibilities
- Recruit from the inside → invest, train, coach
- Increase retention and reduce turnover → reduce recruiting and hiring costs





# Strategic Challenge #2: Workforce Planning

**Be Attractive and Address Strategic Business Needs**

## **Engagement Efforts**

- Connect employees to mission and business values
- Provide motivating and stimulating work environment
- Align with organization's vision
- Provide recognition → value and respect
- Involve employees in problem solving efforts/improvements
- Promote transparency/culture of trust
- Address issues/morale



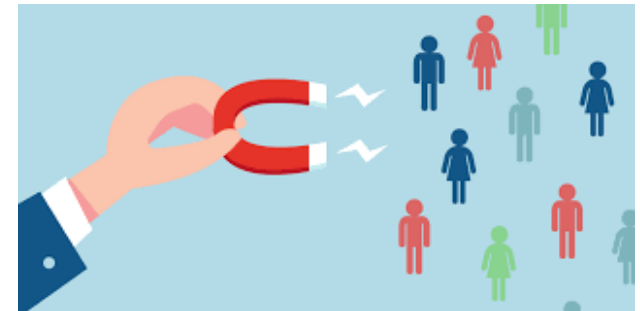


# Strategic Challenge #2: Workforce Planning

## Be Proactive and Address Strategic Business Needs

### Retention Efforts

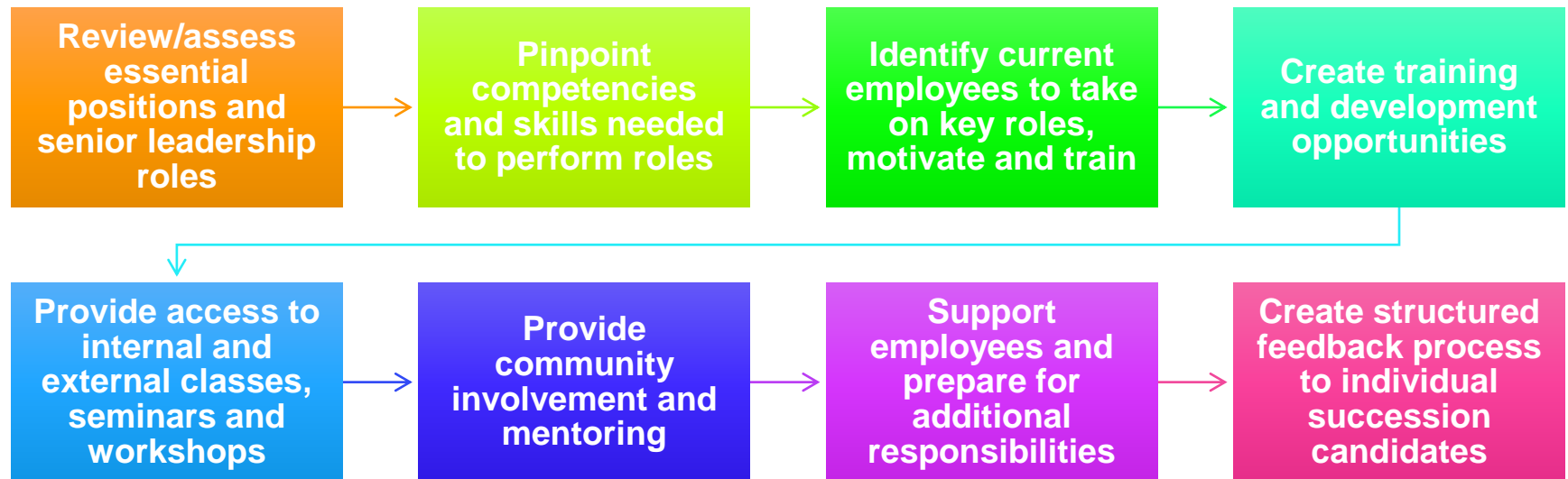
- Solicit continuous feedback from employees (i.e., exit interviews, informal meetings, employee opinion surveys, focus groups, hotlines and program evaluations)
- Determine where to improve
- Identify employees at risk of losing
- Consider measures to aid retention (i.e., comp, benefits, work/life balance)
- Use analytics
- Recognize negative impact of departing top performers/unwanted turnover





# Strategic Challenge #2: Workforce Planning

**Determine Succession Planning Tools Dependent on Employer Size, Scope & Goals**







# Strategic Challenge #3: Benefits and the ACA

## Survey Results and YOY Comparison

**16.2%  
rank  
benefits  
as  
Number 1  
challenge**

**50%  
extremely  
challenged by  
health care  
costs**

**27.2%  
extremely  
challenged by  
preparing for  
the future of  
healthcare  
and ACA**

**16.7% → 2017  
19.7% → 2018  
17.2% → 2019**

**16.1%  
extremely  
challenged by  
adjusting  
benefits for a  
generationally  
diverse  
workforce**

**4.8% → 2017  
9.7% → 2018  
12% → 2019**



# Strategic Challenge #3: Benefits and the ACA

## Survey Results and YOY Comparison

**14.4% extremely challenged by determining which voluntary benefits programs provide the best ROI**

3.6% → 2017  
6.3% → 2018  
10% → 2019

**12.6% extremely challenged by aligning benefit offerings with business objectives**

6.6% → 2017  
8.8% → 2018  
12.8% → 2019

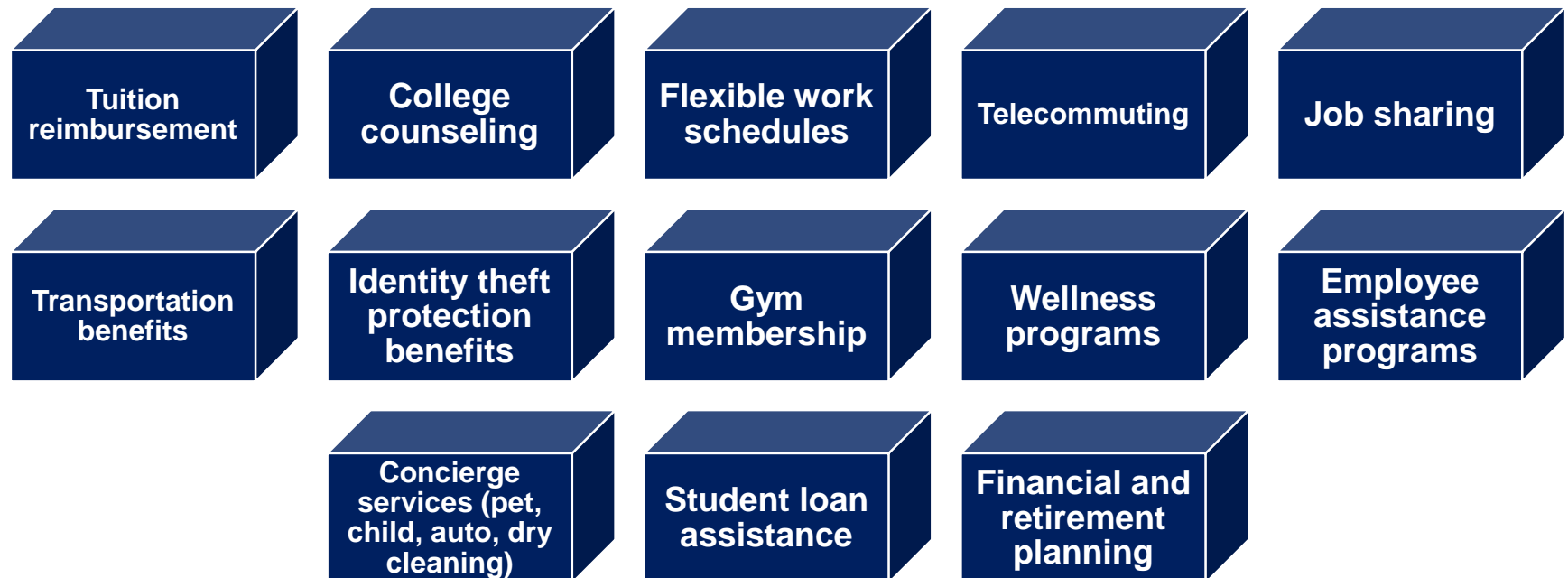
**10.2% extremely challenged by communicating benefits to the workforce**

6.2% → 2017  
10.8% → 2018  
15.3% → 2019



# Strategic Challenge #3: Benefits and the ACA

## Review Current Benefit Offerings/Consider Trends





# Strategic Challenge #3: Benefits and the ACA

## Prepare for the Future of Healthcare and Costs

- Strike a balance → Provide for aging workforce, keep costs low
- Keep employees healthy/happy but provide raises
- Review demographics → determine most attractive benefits
- Make sure offerings competitive
- Assess vendors → evaluate price, quality, customer service
- Identify benefits with low participation, redesign or eliminate
- Effectively communicate benefits
- Provide employees with decision-making tools
- Consider wellness programs
- Tie to business strategy/company culture/corporate values





# Strategic Challenge #3: Benefits and the ACA

## **Additional Considerations**

### **Benefits for Different Generations**

- Different needs/interests
- Consider customization/personalization, provide freedom/choice

### **Technological and Scientific Advancements.**

- Telemedicine and mobile applications improve access
- Artificial intelligence and chat bots answer → improve decision-making/open enrollment
- Artificial intelligence to evaluate benefit needs



# Strategic Challenge #4: Diversity and Inclusion

## Survey Results and YOY Comparison

**5.9% rank  
diversity and  
inclusion as  
Number 1  
Challenge**

**37.8% extremely  
challenged by  
managing  
diversity**

**20.6% extremely  
challenged by  
eliminating  
unconscious bias  
during the  
recruitment  
process**

**11.6% → 2018  
14.1% → 2019**



# Strategic Challenge #4: Diversity and Inclusion

## Survey Results and YOY Comparison

**17% extremely  
challenged by  
hiring a diverse  
workforce**

**4.9% → 2017  
7.4% → 2018  
14.3% → 2019**

**13.1% extremely  
challenged by  
achieving  
diversity and  
inclusion goals**

**6.8% → 2018  
8.4% → 2019**

**12.4% extremely  
challenged by  
aligning diversity  
and inclusion  
with business  
strategy**

**5.6% → 2017  
4.5% → 2018  
8% → 2019**



# Strategic Challenge #4: Diversity and Inclusion

## Expanded Definition of Diversity







# Strategic Challenge #4: Diversity and Inclusion

## Increase and Manage Diversity

### Tie Diversity to Business Strategy and Goals

- Obtain buy in of key stakeholders/upper management
- Cast wide recruiting net
- Focus on individual skills and qualifications
- Incorporate into mission statement



### Incorporate Diversity into Policies and Practices

- Discrimination/harassment including bullying/abusive conduct
- Leave and time off
- Reasonable accommodation



# Strategic Challenge #4: Diversity and Inclusion

## Steps to Increase and Manage Diversity

### Provide Training

- Train on discrimination, harassment, sensitivity, diversity, bullying and abusive conduct
- Overcome stereotypes and prejudices → encourage civility and respect

### Address Complaints

- Multichannel reporting procedure
- Investigate complaints
- Obtain evidence
- Conduct interviews
- Remedial, interim or disciplinary measures





# Strategic Challenge #4: Diversity and Inclusion

## Enhance Inclusion and Combat Unconscious Bias

- Avoid snap judgments/stereotyping
- Avoid steering to certain positions
- Train recognition of unconscious bias
- Provide with tools to manage interpersonal interactions
- Provide employees of different backgrounds with opportunities to work together
- Create mentoring programs for underrepresented groups





# Strategic Challenge #5: Mental Health & Well-Being

## Survey Results and YOY Comparison

**18.8% extremely challenged  
by mental health**

**14.9% → 2018**

**21.6% → 2019**

**20% extremely challenged  
by managing work/life  
balance**



# Strategic Challenge #5: Mental Health & Well-Being

## Recognize the Importance of Mental Health

### Address Mental Health Issues

- Impacts workplace satisfaction, morale and productivity
- Applicable law (i.e., FMLA, ADA, state and local laws)
- Steer clear discrimination, harassment and retaliation
- Train supervisors → be sensitive/recognize red flags

### Respond to Accommodation Requests

- Good faith engagement in interactive process
- Undue hardship





# Strategic Challenge #5: Mental Health & Well-Being

## **Recognize the Importance of Mental Health**

### **Workplace Safety**

- Intervene to protect employer, co-workers, third parties, if employee direct threat
- Carefully screen individuals in dangerous or safety sensitive positions
- Comply with privacy and discrimination laws

### **Company Culture**

- Promote wellness programs
- Monitor with employee surveys, absence data, etc.
- Encourage open communication and inclusion
- Foster healthy work-life balance



# Strategic Challenge #5: Mental Health & Well-Being

## Recognize the Importance of Mental Health

### Benefits

- Substance abuse disorder services
- Behavioral health treatments
- Employee assistance programs
- Paid time off/vacation days/personal days
- Access to gyms
- Flexible working arrangements
- Access to counselors (alcohol and drug abuse, stress, depression)





# Compliance Challenge #1: Wages & Compensation

## Survey Results and YOY Comparison

**10.1% rank  
pay and  
scheduling  
issues as  
Number 1  
challenge**

**13.3% extremely  
challenged by the  
misclassification of  
exempt and  
nonexempt  
employees**  
6.6% → 2018  
10% → 2019

**12% extremely  
challenged by  
equal pay and wage  
transparency laws**  
7.9% → 2017  
8.7% → 2018  
10.7% → 2019





# Compliance Challenge #1: Wages & Compensation

## Survey Results and YOY Comparison

**11.5% extremely  
challenged by  
proposed  
changes to  
overtime  
regulations**

**9.2% extremely  
challenged by state  
and local minimum  
wage rate increases**

**12.9% → 2017  
6.9% → 2018  
9.7% → 2019**

**8.2% extremely  
challenged by  
salary history  
inquiry restrictions**

**5.9% → 2018  
7.5% → 2019**



# Compliance Challenge #1: Wages & Compensation

## Understand Minimum Wage and Overtime Changes



### Minimum Wage

- For 2020, minimum wage increase in 21 states, many localities
- 20 California localities alone!



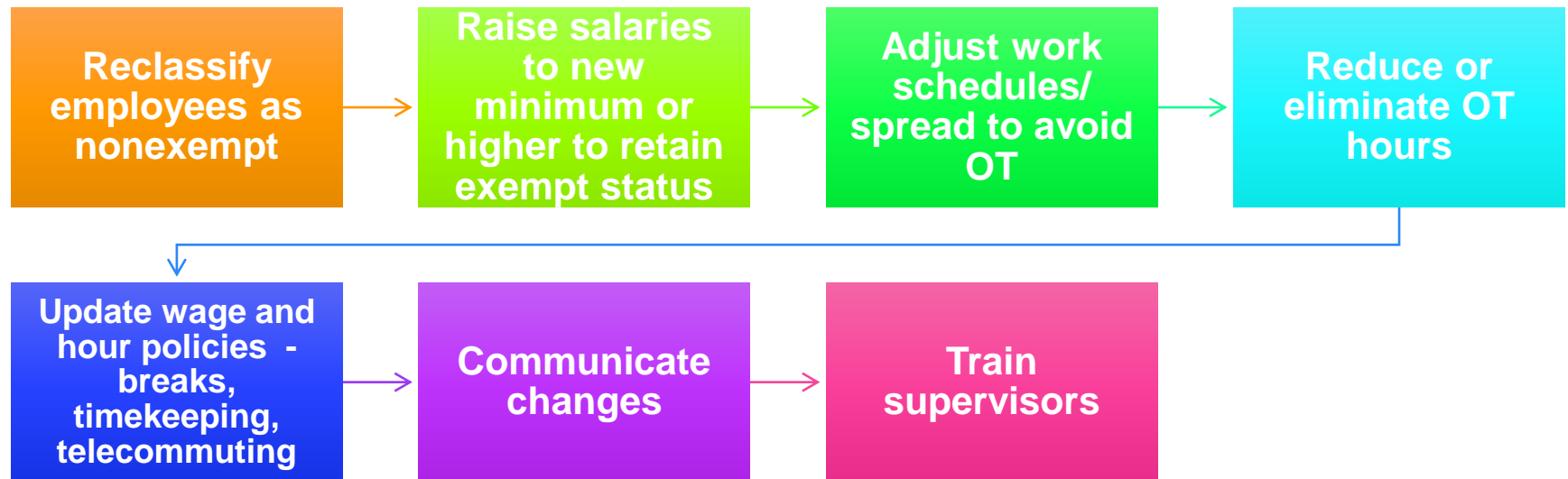
### Overtime Changes

- Effective January 1, 2020, DOL final rule raises the minimum threshold for mandatory overtime pay under FLSA to \$35,568 (or \$684 per week) from its current level of \$23,660 (or \$455 per week)
- Rate covers additional 1.3 million workers previously OT ineligible



# Compliance Challenge #1: Wages & Compensation

## Respond to Overtime Changes





# Compliance Challenge #1: Wages & Compensation

## Understand Pay Equity Efforts

- Recognize new laws → equal pay, wage disclosure, salary history
- Audit pay practices, benefits bonuses as well as job advertisements, job descriptions, job applications, salaries to ensure that the employer is not discriminating based on sex, race, national origin or any other protected class, or requesting unlawful information
- Document wage differentials → base on legitimate factors
- Establish clear compensation guidelines for salary increases/bonuses based on predictable, objective and nondiscriminatory factors (i.e., merit, productivity, performance, sales)



# Compliance Challenge #1: Wages & Compensation

## Address Pay Equity

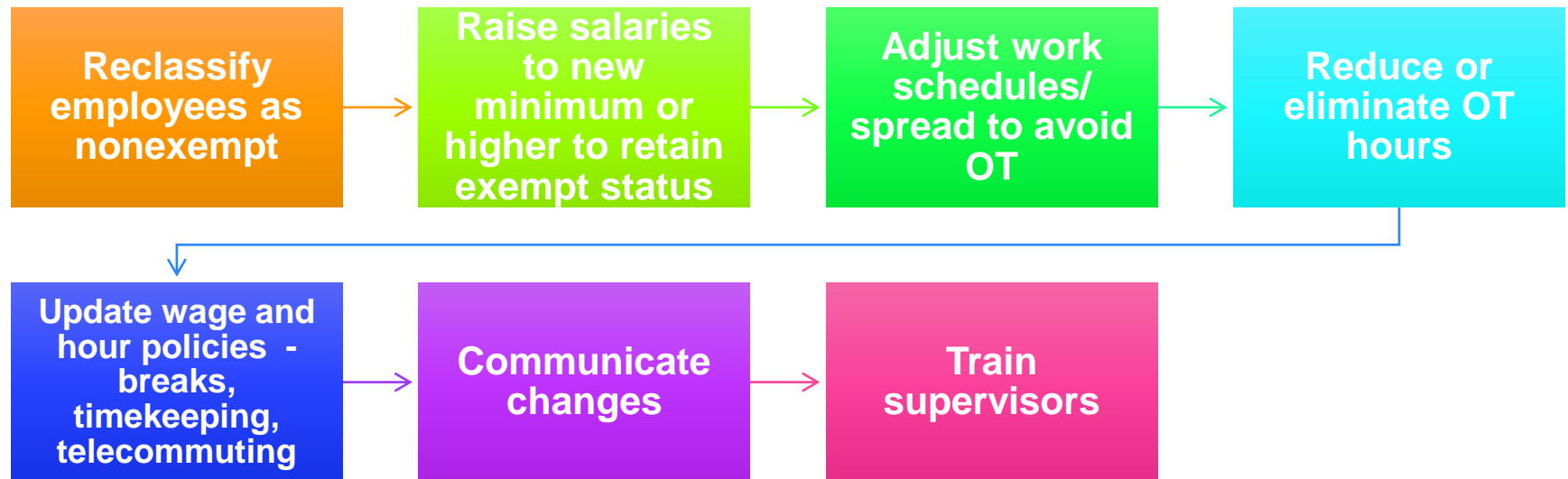
- Train managers on new laws
- Document decisions regarding hiring pay, performance and promotion
- Institute recordkeeping policies and procedures regarding wage records, job classifications, pay performance and promotion
- Focus on individual skills and qualifications
- Establish range of salaries for each position





# Compliance Challenge #1: Wages & Compensation

## Respond to Overtime Changes





# Compliance Challenge #1: Wages & Compensation

## Recognize Risks of Noncompliance



- Significant back wages
- Civil penalties
- Criminal prosecution and even imprisonment
- Harm to business reputation



# Compliance Challenge #2: Employee Leaves

## Survey Results and YOY Comparison

**5.7% rank  
leaves as  
Number 1  
challenge**

**28.9% extremely  
challenged by keeping up  
with rapidly changing  
leave laws**

**11.2% → 2017**

**19.5% → 2018**

**26.5% → 2019**

**(state laws)**

**9.9% → 2017**

**18.6% → 2018**

**24.9% → 2019**

**(municipal laws)**

**23.1% extremely  
challenged by  
administrative burden  
of managing leaves**

**10.9% → 2017**

**15% → 2018**

**21.4% → 2019**





# Compliance Challenge #2 Employee Leaves

## Survey Results and YOY Comparison

**18.7% extremely challenged by paid medical/ family/ parental leave**

6% → 2017

8.9% → 2018

9.9% → 2019

(paid family and medical leave)

11% → 2018

16% → 2019

(paid family and parental leave)

**16.5% extremely challenged by determining overall business strategy for leave**

8.8% → 2017

14.2% → 2018

15.8% → 2019

**16.1% extremely challenged by determining which leave law requirements apply**

8.3% → 2017

14.3% → 2018

21.8% → 2019

**11.4% extremely challenged by leave as a reasonable accommodation**

9.4% → 2018

12% → 2019



# Compliance Challenge #2: Employee Leaves

## **Comply with Leave Laws**

### **Address Leaves**

- Determine applicable law
- Understand how laws work together/which can use concurrently
- Document leave

### **Comply with Rapidly Changing Leave Laws**

- Designate point person to track
- Offer standard leave benefits or tailor depending on location/eligibility
- Provide benefits to improve morale/engagement, reduce turnover/absenteeism



# Compliance Challenge #2: Employee Leaves

## Comply with Leave Laws

### Create Policies to Address

- Types of leave entitled to/ how it accrues
- How time off requested and used

### Train supervisors

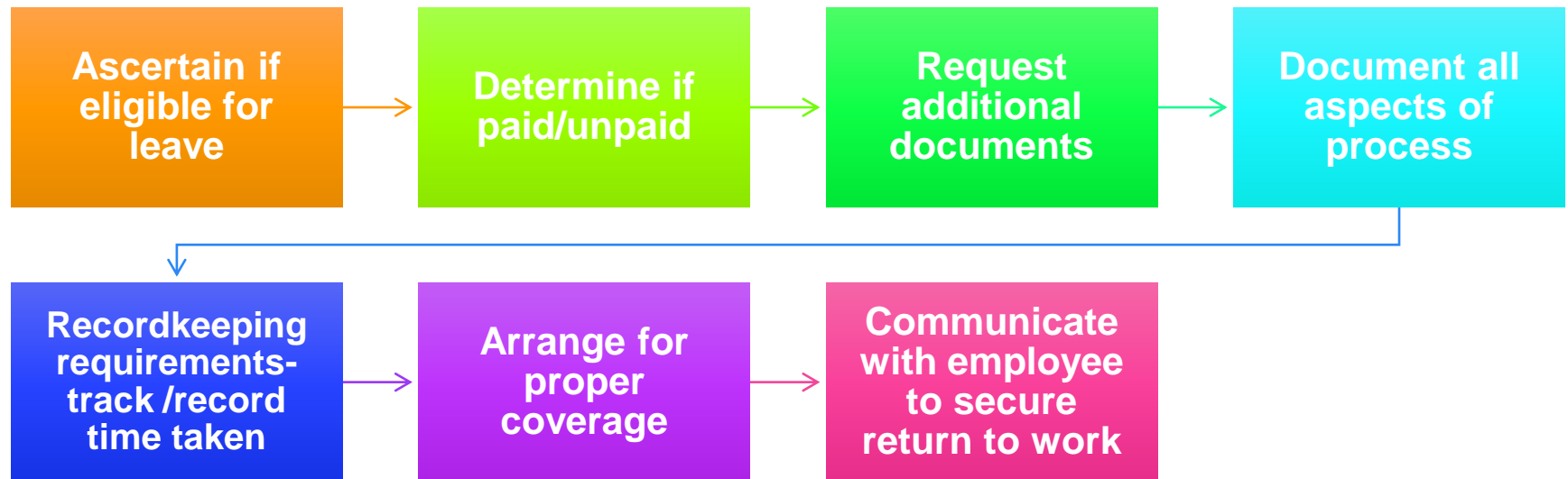
- Handle leave requests in a nondiscriminatory manner
- Track, document, manage and schedule leaves
- Engage in a good faith discussion regarding leave requests
- Don't wrongfully deny/punish for legitimate absences





# Compliance Challenge #2: Employee Leaves

## Respond to Leave Requests





# Compliance Challenge #3: Employee Handbooks

## Survey Results and YOY Comparison

**2.4% rank  
employee  
handbooks  
as  
Number 1  
challenge**

**26.3%  
extremely  
challenged by  
ensuring  
handbooks  
read and  
understood**

**18.1% → 2017  
17.9% → 2018  
23.7% → 2019**

**21.3%  
extremely  
challenged by  
keeping  
handbooks  
current**

**13.2% → 2017  
18.3% → 2018  
23.7% → 2019**

**16.3%  
extremely  
challenged by  
managing  
handbooks as  
multistate  
employer**

**6.8% → 2017  
13.8% → 2018  
21.1% → 2019**



# Compliance Challenge #3: Employee Handbooks

## Survey Results and YOY Comparison

**15.6% extremely challenged by incorporating local requirements**

6.6% → 2017  
11.2% → 2018  
16.3% → 2019

**15.6% extremely challenged by aligning handbooks with business objectives**

8% → 2017  
8.8% → 2018  
13.5% → 2019

**10.8% extremely challenged by NLRB impact on handbook policies**

7% → 2017  
7.3% → 2018  
9.5% → 2019



# Compliance Challenge #3: Employee Handbooks

## Craft the Right Approach

### Ensure Handbooks Read and Understood

- Provide handbook and training
- Require acknowledgment
- Provide context → practical examples/hypotheticals/visuals



### Determine Optimal Organization for Multistate Employer

- Develop general handbook with federal requirements, provide state supplements
- Use separate handbooks for each state
- One handbook with uniform policies for all states/greatest benefits



# Compliance Challenge #3: Employee Handbooks

## **Update Certain Policies Frequently**

- Harassment
- Discrimination
- Accommodations
- Smoking
- Predictable scheduling
- Leave and time off
- Safe driving
- Salary history





# Compliance Challenge #3: Employee Handbooks

## **Consider National Labor Relations Board**

- Clear and unambiguous language
- Don't make too broad/restrictive
- Do not interfere with employee rights
- Consider rule/policy's impact on employee rights
- Provide legitimate business justification for work rule

## **Use Caution with Certain Policies**

- Contact with the press
- Confidentiality
- Investigations
- Employee communications



# Compliance Challenge #4: Marijuana & Drug Use

## Understand the Legal Landscape

Medical marijuana legal in more than 30 states and recreational marijuana use (within specific parameters) legal in over 10 states including DC

**24.6% extremely challenged by medical and recreational marijuana laws**

5.7% → 2017  
10.9% → 2018  
19.5% → 2019

Marijuana remains classified as a Schedule I controlled substance and illegal under federal law



# Compliance Challenge #4: Marijuana & Drug Use

## Conduct Employer Assessment

- Understand applicable law
- Determine if medical/recreational use permissible and parameters
- Reasonable accommodations to medical marijuana users?
- Employees in safety-sensitive positions?
- Subject to the Drug-Free Workplace Act?





# Compliance Challenge #4: Marijuana & Drug Use

## Determine Approach

- Dependent on applicable law, industry, employees position/job duties and responsibilities
- Consider reasons for testing should be job-related/consistent with business need
- Notify applicants/employees regarding method and manner of testing
- Create relevant policies → drug-free workplace, drug testing, disciplinary, smoking
- Train supervisors to recognize signs/symptoms of marijuana (i.e., decreased productivity and focus, bloodshot eyes, slurred speech or a distinct odor) and identify signs under the influence
- Provide accommodations if legally required to do so (disability or state law)
- Be careful about taking disciplinary action → protected class or off duty conduct
- Ensure legitimate/documented non-discriminatory reason for the adverse action



# Compliance Challenge #5: Cybersecurity

## Survey Results and YOY Comparison

**29.8% extremely challenged by preventing cyber breaches and maintaining data security**

**13.6% → 2017**

**27.5% → 2018**

**21.5% → 2019**

**21.7% extremely challenged by responding to cyber breaches**

**18% extremely challenged by processing and protecting employee data**



# Compliance Challenge #5: Cybersecurity

## Understand Risks

### Information to Protect

- Intellectual property
- Data and confidential information
- Employer, employees and customers

### Legal Obligations

- State data breach laws
- GDPR
- California Consumer Privacy Act





# Compliance Challenge #5: Cybersecurity

## Identify and Control Access to Information

- Background screens if accessing sensitive information (i.e., financial, payroll)
- Red flags (previous fraudulent or dishonest conduct)
- Limit access to confidential information
- Link to job duties
- Dispose information not using
- Conduct exit interviews and return access to information





# Compliance Challenge #5: Cybersecurity

## Develop and Implement Policies and Agreements

- Confidentiality policies and agreements
- Privacy policies
- Mobile device policies
- Social media policies
- Employee conduct policies
- Business ethics policies







# Compliance Challenge #5: Cybersecurity

## Train Employees and Supervisors

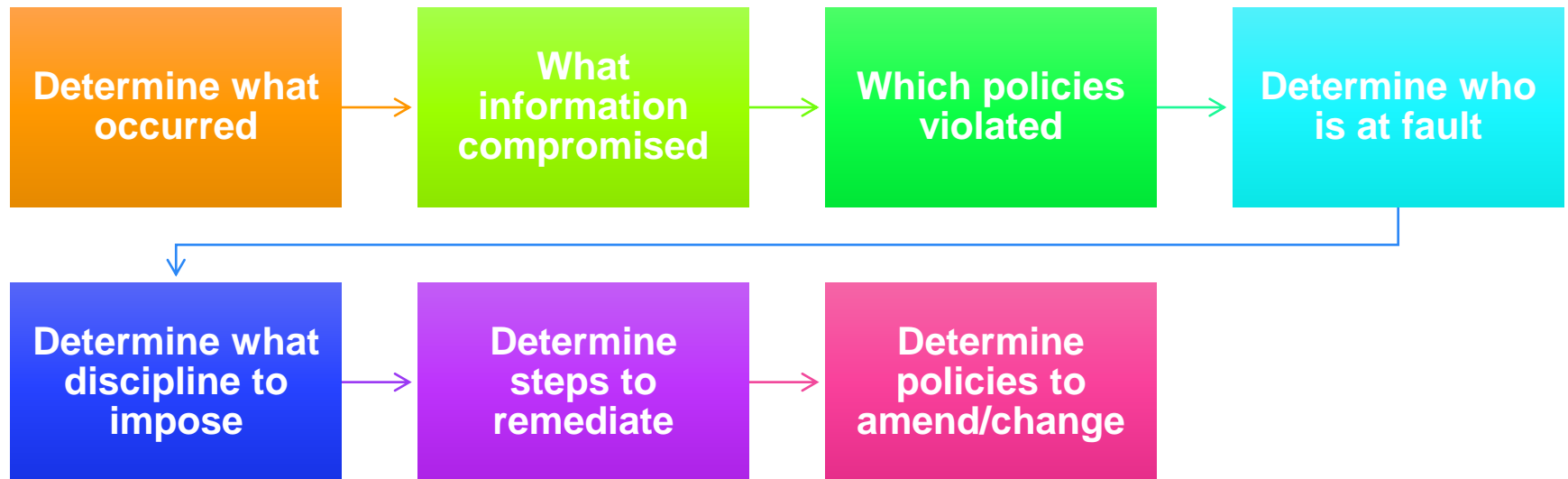
- Take safety measures re: confidential data – passwords, encryption
- Recognize obligations and penalties for disclosure
- Avoid clicking on suspicious links
- Identify suspicious emails/phishing
- Don't mix personal and work-related
- Don't download suspicious apps/docs/files
- Secure mobile devices
- Actively monitor employee and supervisor activity





# Compliance Challenge #5: Cybersecurity

**Address Data Breaches and Coordinate with IT**





## Final Thoughts

**Connect HR  
to business  
goals and  
strategies**

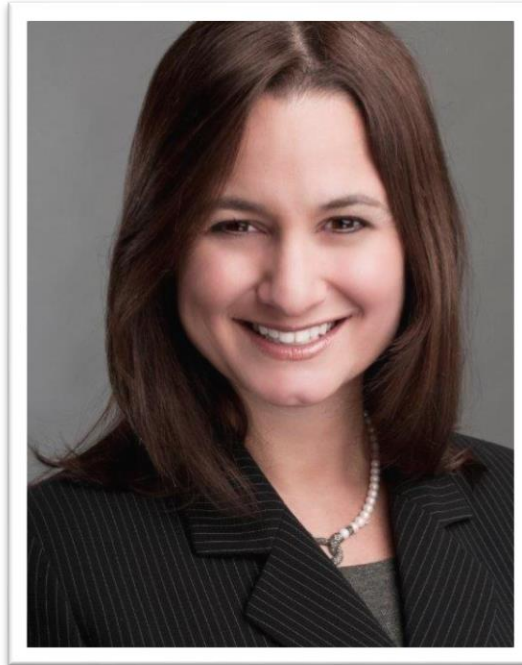
**Develop,  
implement  
and enforce  
policies  
and  
procedures**

**Train  
employees  
and  
supervisors**

**Investigate  
complaints  
and  
concerns**

**Create a  
diverse,  
inclusive,  
respectful  
and  
transparent  
workplace**

**Use  
predictive  
analytics to  
track and  
evaluate  
progress  
over  
employee  
life cycle**



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# Thank You!

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