

Could Flexible Practices Change Workplaces?

New employment programs and matching corporate cultures could transform companies.

BY ELLEN JAMES

Corporate experimentation and innovative employment practices designed to promote more flexible work environments have the potential to dramatically change the workplace for the better.

These practices, if implemented properly and with the right intentions, may be transformative. However, if introduced hastily with unstated, inconsistent goals, these practices may be harmful to employees and company morale, potentially leading to lawsuits for labor and employment law violations.

Programs providing salaried employees with unlimited paid time off are being implemented by larger corporations such as Netflix, Virgin America, Best Buy, Microsoft and General Electric. Many startup companies are also implementing these programs as well.

If the company culture is aligned with stated purposes and goals, employees are empowered to manage their schedules in a way that serves their needs so long as they are getting their jobs done.



Employers ultimately benefit from such policies because they can lead to a more engaged workforce and reduce administrative overhead by removing the need to process and track vacation, family leave and sick-time usage.

However, the reality can be quite different when the company culture and the practice are not so aligned. In this environment, employees may be unsure how much vacation time they can take in comparison to their

cohorts without placing their jobs in jeopardy.

Under an unlimited-paid-time-off policy, employees may end up taking fewer vacation days than they had previously taken, leading to higher burnout rates, lower job satisfaction, lower productivity and an unhealthy balance between work and home demands.

Mutual trust, where both worker and employer agree not to abuse the system, is the key to ensuring that these new practices work effectively.

ROLLING OUT NEW POLICIES

Evernote Corp., a company that builds apps for organizing information, and software company Travis CI GmbH have recently implemented time-off policies that align the companies' cultures with their practices.

Not only does Evernote offer its employees unlimited paid vacation each year, the company recently implemented a policy whereby employees forfeit a \$1,000 bonus if they fail to take an entire week off at one time during the year.

Travis CI recently implemented a policy setting a required "floor" on employee vacation days: Each employee is required to take at least 25 days off per year.

Similar reforms are evolving in family-leave policy. Microsoft Corp. is planning to significantly increase paid family leave. Netflix Inc. recently rolled out a family-leave policy providing new parents (men and women) unlimited time off during the first year after the birth or adoption of a child.

Employees receive normal pay during this first year and may choose to take time off, go part-time or work full-time.

These changes go above and beyond what most companies in the United States offer, but not all employees at Netflix will benefit from this change.

Only salaried employees in the company's streaming division receive

the new coverage. Employees who work in the DVD division or in corporate customer service will not receive this benefit, which may cause a rift in the company's ranks.

The United States, contrary to most European countries, does not have laws requiring paid family leave.

Under the Family and Medical Leave Act, an employee's job is only guaranteed for up to 12 weeks of unpaid family leave time. The benefits available to salaried versus nonsalaried workers create an environment of de facto inequality.

BOOSTING PROTECTIONS

The Obama administration is trying to restore protections for hourly workers, including extra overtime pay, requiring federal contractors to give their workers paid sick leave and addressing the misclassification of workers as independent contractors.

In today's emerging world of experimental and flexible work environment practices, there are benefits and risks for employers and employees.

These practices, with the proper policies and company culture, assist high-performance organizations in recruiting and retaining motivated, responsible employees who can balance their personal and professional lives.

With opportunities to take time off to refresh and recharge,

employees will return to work less stressed and more committed. However, where policies and culture are less aligned, companies could risk low employee morale and confusion as to what is expected.

When disagreements do arise, the impact of these innovations, intended to benefit both employees and employers, are likely best resolved through the flexible process afforded by alternative dispute resolution.

These foreseeable disputes lend themselves to mediation rather than litigation because of the compromising ADR offers.

When it comes to flexible practices, many companies may adapt their procedures to accommodate an evolving market of highly sought-after employees.

However, we cannot be deluded in concluding that the visionary policies of various entities are a substitute for basic workers' rights for both salaried and nonsalaried employees. Enhanced workers' protections need to be enforceable for a broad spectrum of businesses.

Experimentation with vacation, sick leave and family leave, job classifications and lowered overtime pay is no substitute for the foundational fairness that laws and court decisions provide.

The courts, therefore, must remain vigilant and receptive to monitoring all employees' and employers' rights.



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