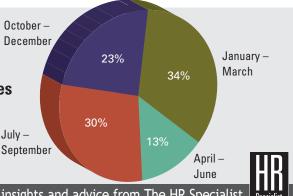


# **SNAPSHOT**

According to U.S. employers, in which quarter do employees most frequently call in sick?

Source: CareerBuilder survey



September 1, 2017 • Special Edition

Trusted insights and advice from The HR Specialist

# Is it illegal to assign 'too much' work?

In the past few years, recessionweary employers have been asking employees to take on more work, and to complete it in less time.

But is there a legal tipping point to the amount of work that can be assigned to an employee?

As recent court cases have shown, you may be tempting fate—and a Fair Labor Standards Act (FLSA) class-action lawsuit—if your managers are demanding so much productivity from hourly employees that they can't reasonably get everything done in the time you allow.

In these cases, nonexempt employees say they felt compelled by

their bosses (and the workload) to come in early or stay late to meet the "unreasonable" work requirements.

Such off-the-clock work has been the spark that has lit thousands of costly lawsuits for unpaid overtime.

**Example:** Several employees at a Verizon Wireless call center sued, claiming they weren't paid for work they performed before and after their shifts. They claimed that, before logging in to the call center system each morning, they spent time checking email and preparing for the calls that would soon begin. Then they reversed the process at the end of each shift.

Continued on page 2

# 8 tips to take your employee handbook online

Is your employee handbook still an actual book? Turning your handbook into an electronic document can cut costs, make updating easier and give employees a convenient place to access policies.

Going electronic isn't technically difficult. But it involves more than simply transferring written documents to a database or internal website.

Use the following guidelines to help protect your organization against

## Resources Handbook checkup

- 7 most common handbook errors, www.theHRSpecialist.com/ handbookerrors
- Self-audit for handbooks, www. theHRSpecialist.com/handbookaudit
- Checklist: What to include in handbooks, www.theHRSpecialist.com/ handbookchecklist

legal trouble when transitioning your handbook from traditional paper to an electronic version:

- 1. Put acknowledgment upfront. Format your electronic handbook so that employees can't miss acknowledgment forms and at-will employment disclaimers before reading the web version of the document.
- **2.** Require employees to log in using their passwords to access it. You don't want outsiders to access company policies.
- **3.** Include links in the handbook that connect the policies and information to commonly used forms or documents, such as benefits, health plan summaries and IRS forms.
- **4.** Include HR email and telephone contacts. Update as needed.
  - 5. Proofread the handbook for

Continued on page 2

# What's News .

# Internet addiction: An ADA-protected disability?

The latest edition of the DSM-5, the official psychiatrist's diagnostic manual, includes "Internet Addiction Disorder" for the first time. It's not listed as a clinical disorder yet, but one that will require more research to see if it rises to that level. If Internet addiction is declared a psychiatric disorder, employees who suffer from it may be protected by the ADA, requiring you to accommodate the condition. Read more at www. theHRSpecialist.com/InternetADA.

# Know your state's law on required employee breaks

The federal Fair Labor Standards
Act doesn't require you to provide
employees with lunch or coffee breaks.
However, 40 states do have laws covering meal and rest breaks. Find a complete list of state break laws at www.
theHRSpecialist.com/breaklaws.

# Your HR career: It pays to specialize

Compensation for employees in HR specialties (benefits, training, etc.) runs about 20% higher than pay for HR generalist positions, says a recent national report. Compensation also rises for HR jobs in larger organizations and in larger cities. Plus, more HR professionals are earning incentives as their jobs become more strategic. Read the full report at www.theHRSpecialist.com/HRsalaries.

#### Inside

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# Too much work?

(Cont. from page 1)

Verizon argued that it didn't condone off-the-clock work. It said employees could have read email and performed other routine tasks between calls. The employees said there was no time between calls.

Verdict? The court gave the green light for the class-action case, based on this group's claim that management's expectations could not be met during regular working hours. (Jennings, et al., v. Verizon, No. 12-00293, DC MN)

# Sample policy: Overtime

Feel free to edit this sample policy to fit your organization:

Overtime must be approved by your supervisor in advance and should be included on the time sheet in your total hours worked. XYZ retains sole discretion to determine when employees must work overtime. All nonexempt employees will be paid at one and a half times their base hourly rate for any work performed over 40 hours per week.

# Online handbook

errors and omissions before and after putting it online. Test any links in the document.

- 6. Alert employees to the **change.** Send an email (with a link to the handbook) explaining the handbook is available online. Ask employees to read the handbook, sign the forms and return them to HR by a certain date. Follow up with workers who don't respond.
- 7. When handbook changes are made, immediately email all employees. Make it clear in the subject line that the email is urgent and employees must read it. Keep records of these update emails in case legal action requires proof.
- 8. Make hard copies of the handbook available for employees who prefer paper versions or don't have reliable access to a computer.



# **Workers treated 'like property': EEOC** wins largest-ever jury verdict

An Iowa jury has awarded 32 men with intellectual disabilities the largest verdict in EEOC history-\$240 million for 20 years of disability discrimination and abuse.

The jury awarded each of the men \$7.5 million in punitive and compensatory damages. It found that Hill County Farms exploited the workers, who butchered turkeys, because their intellectual disabilities kept them from understanding their legal rights.

The company treated the men "like property," said Robert A. Canino, the EEOC attorney who tried the case. He presented evidence that for years, the company's owners and employees verbally and physically harassed the workers, forced them to live in "deplorable" dormitories and withheld medical care.

The men testified they were repeatedly beaten, kicked and forced to carry heavy weights as punishment.

"These men suffered isolation and exploitation for many years, while their employer cruelly consumed the fruits of their labor," Canino said.

## Feds offer free toolkit to help employees plan for retirement

Help your employees jumpstart their retirement savings by pointing them toward a new planning toolkit prepared by the U.S. Department of Labor and the Certified Financial Planner Board of Standards.

Savings Fitness: A Guide to Your Money and Your Financial Future features worksheets to help new to midcareer workers manage their financial lives, including identifying short- and long-term goals, building a budget, tracking debt and determining a target retirement saving rate.

**Advice:** Consider providing copies to all employees. Download the toolkit free at www.dol.gov/ebsa/pdf/ savingsfitness.pdf.

# Cut the fat: Can you reject obese applicants?

In the past decade, two things have definitely grown: Americans' waistlines and the desire for employers to reduce their employee-related health care costs. Those two trends have more employers considering a legally risky thought: Can we refuse to hire overweight people?

The debate typically comes down to a question of whether obesity is a protected "disability" under the ADA. Simply being obese doesn't typically entitle an employee to ADA protection. But the ADA does protect people who are morbidly obese.

Overweight employees have brought successful ADA claims under the following arguments:

The employee has a related health condition. Weight-related conditions—such as diabetes, heart disease and hypertension—may be "substantially limiting" enough to grant the employee ADA protection, regardless

of the degree or cause of the obesity.

The employer acts on stereotypes and assumptions. If you perceive employees or applicants to be disabled, they will earn ADA protection. A truck driver recently won \$109,000 in damages after his employer suspended him without pay based on the assumption his obesity made him unfit to drive a truck. (McDuffy v. Interstate Distributor)

Men and women are held to different weight standards. A Yale study found that overweight women are twice as likely to face discrimination than overweight men. If you treat overweight women differently, you could face a sex bias lawsuit.

The skinny: The legally safe bet is to ignore applicants' weight, unless it could prevent performing essential job functions. There's a chance the problem could be tied to a medical condition that could trigger ADA protection.



## **Inside this 4-page supplement**

Training handout for your supervisors: 50 great interview questions	.4
Tools of the HR trade: Exit Interview Form	.5
A new hire's first six months: 10 key mistakes to avoid	6

# Workplace bullying: What if HR is the target?

More than one-third of HR professionals say they're bullied by executives, managers or co-workers, according to a recent survey, HR in the Crossfire, by Sullivan University in Louisville.

The bullying includes verbal abuse, threats, intimidation, harassment, derogatory emails, the spreading of rumors, angry confrontations and work sabotage. The bullying typically comes from managers and supervisors.

More than half of bullied HR professionals (54%) believe the abuse is directly related to their role in HR.

**Advice:** Don't suffer in silence. Follow these suggestions for confronting bullying behavior.

- Draw a line between bullying and professional criticism. Your antagonist may be mad at an HR policy or decision, not you. However, if continued harsh critiques of you or your performance have crossed the line, you're probably right.
- **Meet with offenders.** Be clear and frank about behavior. If your efforts fail, talk to the bully's boss.
- **Document each incident.** It's important to establish a pattern because bullying can accelerate gradually, and management may blame the victim. Good documentation shows how events really transpired.
- Reject appeasement. Management may assume bullies will stop if they get their way. That won't work long-term; appeasement actually encourages more bullying.
- **Cite legal risks.** Explain that ongoing bullying risks a potentially costly lawsuit. *The grounds:* That your company allows a hostile work environment.

# Access your action plan: 4 steps to project implementation

You're embarking on a big project and you want to do it right. So you draft a detailed plan. Just make sure it pays off. After you write an action plan, you may feel better just knowing it's there. But a poorly devised plan can actually work against you. Follow these rules:

**1. Identify "action triggers."** List the times, situations and people who will trigger specific action, as opposed to listing general themes or vague goals.

*Example:* Replace "Weigh benefits options" with "Use survey results to choose best voluntary benefits options."

- **2. Maintain flexibility.** A plan that gets too detailed too far in advance can backfire. Specify how you'll address immediate to-do items, but don't overthink your longrange plans. Leave room for unexpected developments.
- **3. Set a deadline.** Allot one hour to draft your action plan. During that time, break your project into stages and create a simple, practical road map to reach your goal. Treat the plan as a means to an end, not an end in itself

Perfectionists beware! Don't keep tweaking the plan. After an intensive hour of planning, get started. That protects you from getting so bogged down that you never act.

**4. Get input.** Show your plan to a trusted colleague and ask for feedback.

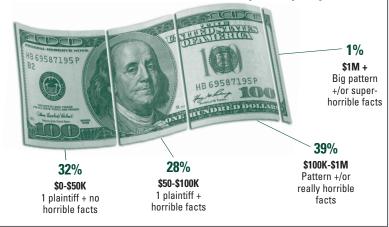
You may learn that you're making false assumptions or that the plan has defects that weren't readily apparent to you.

# If you lose an employment lawsuit, how much will you pay?

Staffing firm Manpower crunched recent lawsuit data to help guide your settlement decisions.

The bottom line: If your case has just one plaintiff and no "horrible facts" that would make a jury cringe, expect to pay up to \$50,000. That covers about a third of all employment law cases. If you have one plaintiff and horrible facts, you'll likely pay between \$50,000 and \$100,000 (about 28% of cases).

With many plaintiffs or really horrible facts, expect to pay up to \$1 million. Finally, with lots of plaintiffs *and* super-horrible facts, you'll pay over \$1 million—truly, a 1% group you don't want to be in.



# The Savvy Manager

# Hiring

# Identifying applicant skills: 50 great interview questions

In addition to giving job-specific tests, the best way to tell if applicants hold the skills to perform specific tasks is to ask direct questions about how they've used each skill in the past. Here are some sample questions that hiring managers can use:

#### Initiative

- **1.** Describe a time when you did more than was required.
- 2. What have you done to make your job more rewarding?
- **3.** Describe how you solved a serious work problem.
- **4.** What do you do differently than others in your job?
- 5. Tell me about an idea you generated. How did it work?

### **Decision-making**

- **6.** What was the toughest decision you've made? Why?
- **7.** Describe a work-related problem you had to face recently. What procedures did you use to deal with it?



#### **Communication skills**

- **8.** Describe when you had to pitch a proposal. How did you do ... and why do you think it went that way?
- **9.** Have you ever given someone instructions and then learned he or she did it wrong? Why did that happen?
- **10.** Have you done public speaking? How did it work out?

## Integrity

- 11. Do you feel some rules should be obeyed more closely?
- **12.** Did you ever have to deal with co-workers who didn't pull their weight? What did you do about it?

## Leadership

- **13.** Have you ever had to introduce a new idea or process at work? What approach did you take to gain cooperation?
- **14.** Tell me about a time you had to gain cooperation of a group over which you had little authority. How did you?
  - **15.** Describe how you helped someone solve a problem.

#### **Persuasiveness**

- **16.** How did you sell the best idea you ever had?
- 17. What was the best idea you failed to sell? Why did it fail?
- **18.** What strategies have you found work best when trying to sway someone to your point of view?

#### Planning/time management

- 19. Describe a typical workweek. How did you plan it out?
- **20.** How do you determine your highest priorities?
- 21. How do you develop short-range plans? Long-range?
- 22. How many hours a week are critical to do your job well?

#### Sales skills

23. Describe the primary types of people to whom you

# For 150 more sample questions ...

Download *The HR Weekly's Library of Skill-Based Interview Questions* at www.theHRSpecialist.com/skills.

- sell. What approach do you use for each group?
  - 24. What's your best method to obtain new prospects?
  - 25. How do your selling techniques differ from others?
  - **26.** Describe your toughest sales experiences.
- **27.** Describe a typical sales encounter. Exactly what would you say to convince a customer to buy?
  - **28.** Define your closing style.

## **Supervision**

- 29. In what ways have you made your group more efficient?
- **30.** What one thing distinguishes a superior employee?
- **31.** How do you monitor your staff's performance?
- **32.** How do you confront an employee if results are poor?
- **33.** Give me an example of your ability to facilitate progressive change within your organization.

#### Technical skills

- **34.** How did you gain the technical knowledge you need?
- **35.** Give me an example of an especially difficult assignment. What was your role? What did you do?
- **36.** Have you received any commendations for your performance?
- **37.** What's the most important development occurring in your field today? What impact will it have?
  - **38.** How do you keep up with developments in your field?
  - 39. To what job-related organizations do you belong?
  - **40.** What job-related publications do you normally read?

# General interview questions ...

- 41. What skills do you enjoy using?
- 42. What is your greatest strength?
- **43.** What's the greatest asset you currently bring to your company?
- **44.** What is your greatest weakness, and what have you done to overcome it?
- 45. Why should I hire you?
- 46. What makes you stand out?
- 47. If you started tomorrow, how could you contribute right away?
- **48.** Are you familiar with our corporate culture? How would you fit in?
- **49.** How would you spend day one?
- **50.** What do you feel an employer owes its employees ... and vice versa?

#### **Exit Interview Form** 1. What factors led you to accept a job with us?\_\_\_\_\_\_ 2. Have your feelings changed since then? 3. How would you describe the level of training you received here? 4. How would you rate your job performance here? 5. How would you rate the following aspects of your employment here? **Excellent** Good Fair **Poor** Advancement opportunities: Performance reviews: Work environment: Your pay: Your benefits: 6. What did you enjoy about working here? 7. How would you rate your supervisor in the following areas? **Excellent** Good Fair **Poor** Shows fairness: Provides appropriate recognition: Solves problems promptly: Follows policy and procedures: Communicates effectively with staff: Encourages feedback: Knows how to do his/her job: 8. If you came back to our organization, would you like to work for the same supervisor? 9. Are you leaving for a similar job?\_\_\_\_\_ 10. What role does salary play in your decision to leave?\_\_\_\_\_ 11. What could we have done to prevent you from leaving?\_\_\_\_

[signature]

[signature]

Employee

HR Representative

Date

Date

## Staffing

# A new hire's first six months: 10 key mistakes to avoid

by Amy Hirsh Robinson

It doesn't take long for people to decide if they'll be short-term or long-term employees.

Especially during the first six months, employees are highly alert to signals and experiences—however minor that will help them navigate their new work environment.

In this impressionable state, they are more likely to jump to conclusions about their employer before having all the data. For employers, making a favorable impression during these first six months is critical to employee retention, engagement and productivity.

The problem: Most employers focus on making good first impressions during the recruitment process. They neglect to think about what will happen once the employee accepts the job.

Employees who attend a structured orientation program are 69% more likely to remain with the company after three years than those who do not, according to research conducted by Corning Glass.

What's more, organizations with structured onboarding programs enjoy a 60% year-over-year improvement in revenue per full-time employee and a 63% year-over-year improvement

in customer satisfaction, according to a study by The Aberdeen Group.

If you are going to spend money and time acquiring top talent and paying them to work, why not prepare them to succeed and stay?

#### The cost of bad onboarding

All employers have new-hire onboarding (i.e., the process of integrating new hires into an organization), whether they manage it or not.

The costs of a poorly managed program are significant to a company's bottom line, and include:

organization and culture

• Increased turnover

Prepare for employee

· Identify transition risks

• Diminished productivity

- Reduced employee engagement
- Loss of respect for management and the company
- Degradation of the company brand.

### No one-size-fits-all approach

There is no single "correct" approach to employee onboarding. Every situation is unique and an effective onboarding program will have direct alignment to a company's long-term strategy and goals.

That said, here are 10 pitfalls to avoid in all situations:

- 1. Not having a ready workstation on day one.
- **2.** Assuming that a new hire cannot be productive from day one.
- 3. Cramming 20 hours of information into four dull hours of orientation.
  - **4.** Neglecting the importance of cultural adaptation to the new hire's success.
    - **5.** Ignoring the onboarding needs of mid- and senior-level employees.
    - 6. Relying on organizational charts, rather than cultural norms and behavior, to explain lines of communica-
    - **7.** Failing to address generational needs and differences in the onboarding process.
  - **8.** Starting new hires when their supervisor is absent.
  - **9.** Running a disorganized program.
  - **10.** Adopting a "sink or swim" approach.

#### The bottom line

— Amy Hirsh Robinson

"Employees who

remain with the company after three

years than those who do not."

attend a structured

orientation program

are 69% more likely to

Employees who feel challenged, empowered and acknowledged during the first year of employment will reward companies with loyalty and productivity. Those who feel overlooked or marginalized will eventually leave for opportunities that better meet their needs.

To what extent does your onboarding process fit the needs and expectations of your top talent?

Amy Hirsh Robinson is a principal with Interchange Group in Los Angeles; www.interchange-group.com.

new hire survey & other

means

#### Your onboarding blueprint: The first year Before first day First day First week First 90 days First year Assign a buddy to the Introduce employee to Set performance Create employee Recognize positive employee buddy and colleagues expectations & job development plan employee contributions • Extend personal · Provide essential training · Provide formal & Meet immediate Explain performance informal feedback on welcome to employee requirements for Assign mentor(s) appraisal process performance employment Communicate first day Plan team activities & Assign meaningful work Assess future training & logistics to employee Situate employee with interdepartmental mixers Send paperwork in resources or networks • Ensure direct managerial development needs Monitor performance advance or online portal required for work involvement & provide feedback • Orient employee to · Schedule meetings with · Obtain feedback through

senior leadership

# How to beat FMLA intermittent leave abuse

Managing FMLA intermittent leave can be vexing, but employers do have some tools to combat leave abuse. One of the most effective is FMLA certification.

As with FMLA leave taken in one block, employees who request FMLA intermittent leave must give you notice—at least 30 days in advance when the need is foreseeable. When it's not, they must notify you "as soon as practicable."

## Certify and schedule the leave

Don't accept intermittent leave requests at face value. The FMLA allows you to demand certification from a doctor that an employee needs FMLA leave. You can request new medical certification from the employee at the start of each FMLA year. You're also entitled to ask for a second or third opinion (at your expense) before granting FMLA.

When employees have chronic conditions and certifications that call for intermittent leave, attempt to work out leave schedules as far in advance as possible.

Nail down the expected frequency and duration of FMLA intermittent leave. Demand a medical provider's estimate of how often the employee will need time off. You also can wait until the provider gives you that estimate to approve intermittent leave.

Here are four tips on certifying FMLA intermittent leave requests:

- 1. Ask about the specific condition. Medical certification must relate only to the serious health condition that is causing the leave. Don't ask about general health or other conditions.
- 2. Allow time to respond. After you request FMLA certification, give employees at least 15 calendar days to submit the paperwork. If the employee's medical certification is incomplete or insufficient, specify in writing what information is lacking. Allow seven days to cure the deficiency.
- 3. Investigate the certification if you doubt the need for **leave.** Under the updated FMLA regulations, you can directly contact the employee's physician to clarify the medical certification. Who can make that call? An HR professional, a leave administrator (including third-party administrators) or a management official, but not the employee's direct supervisor.
- 4. Require (and pay for) a second opinion if you're still

not convinced. Use an independent doctor who you select, not a doctor who works for your organization. If the two opinions conflict, you can pay for a third and final, binding medical opinion.

# One simple tip to keep **FMLA** under control

Employees who take FMLA intermittent leave for chronic health issues can wreak havoc on work schedules. But there are legal ways to curtail leave.

One of the easiest: Use the "calendar year" method to set FMLA leave eligibility.

Here's how it works: Sometime during the calendar year, an employee submits documentation showing she will need FMLA intermittent leave



for a chronic condition. If she is eligible for leave at that time, she can take up to 12 weeks of intermittent leave until the end of the calendar year. Then the process starts again.

If, on Jan. 1, she hasn't worked 1,250 hours in the preceding 12 months, she's no longer eligible—and won't be eligible again until she hits 1,250 hours.

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# **Worker can't sign time sheet:** What's the legally smart move?

If an employee is not available It an employee and to sign his or her time sheet, should the supervisor just sign the employee's name and add a comment stating that the employee was not available? — Irene, Texas

A better practice would be to have the supervisor sign his or her own name, with a comment saying that the employee is not available to sign. Include any helpful information, such as that the employee confirmed by telephone that the hours were correct, or that the scheduled hours were shown, or any other such details.

It's important that the records be accurate. So the supervisor's signature is there to show that, in the absence of the employee to confirm the hours worked, the supervisor made an effort to determine if the hours were correct and believes that they are. If the employee later disputes the hours worked, a correction can be made at that time.

# Salaried worker out on FMLA leave: How do we pay half-days?

We have a salaried employee who needs to take FMLA leave. Some days off will be full days, so they would be unpaid (unless she has vacation or personal time). But how do we pay for the intermittent days on which she only takes a half-day off? — Mary, Nebraska

A Salaried employees are generally entitled to a full day's pay for any work they perform that day, pursuant to the Fair Labor Standards Act's salary pay requirement. However, the FMLA provides an exception to that rule. If your employee works half a day, the other half-day taken for FMLA leave can be unpaid, assuming she chooses not to use any vacation or personal time to make up the shortfall in pay.



Nancy Delogu, Esq., is a shareholder in Littler's Washington, D.C., office. She also answers the "Ask the Attorney" employment law questions at www.theHRSpecialist.com.

# <u>Your Career</u>

# Drafting a 'career annual report': 6 questions

What have you learned and accomplished in the past five years? If you can't answer that, you'll have a tougher time selling yourself to potential employers.

One tool to help you brand yourself: Draft a "career annual report" that can help you gather your thoughts about your professional and personal achievements, goals and contacts. This will help you catalog what you bring to the organization.

Management guru Tom Peters says you can accomplish this by writing out your answers to the following six questions each year:

- 1. "I'm known and respected for [two or three things]. In a year, I'll also be known for [another thing]."
  - 2. "The project I'm working on

now will [teach me this] and [accomplish this] for my organization."

- 3. "The two most valuable lessons I learned in the past six months are ..."
- 4. "I'm beginning a campaign to promote my 'personal brand,' which will include [name as many highprofile achievements as applicable, including civic contributions] and show that I've [accomplished what]."
- 5. "My important new contacts in the past three months are [list one to three names]. I value these folks [for what reasons]."
- 6. "My résumé is significantly improved from a year ago because of [one or two additions]."

Final tip: Set a recurring date in your Outlook calendar to perform this Q&A task each year.

# The Last Word

## Do your execs hate HR? Here's what to do about it

Build positive relationships with the C-Suite by following these steps:

- 1. Just say 'no' to no. Be a compliance coach, not a compliance cop. Before you say "no," explore what management is trying to accomplish. Take time to evaluate. You'll probably spot options that avoid a "no" answer.
- 2. Speak their language. Execs worry about cost and ROI. Reach them by citing data and metrics.
- 3. Remember, you're management. Never lose sight of whose side you're on—the organization's.

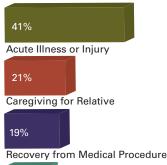
You can learn two more tips, plus additional effective strategies, at www.theHRSpecialist.com/5things.

# On big issues, poll your 'personal board of directors'

When legendary business thinker Jim Collins, author of Good to Great, was in his 20s, he pulled out a piece of paper and drew a little conference table with seven chairs around it. On those chairs he wrote the names of the seven people he trusted most. He pasted it above his computer, and when he was stuck on an important problem, he would informally poll this "personal board of directors."

## What was the most recent reason one of your employees took FMLA leave?

Pregnancy/Childbirth/Adoption





Source: The HRSpecialist.com survey of HR pros