

HUMAN RESOURCES & LABOR LAW

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YOUR HUMAN RESOURCES SOLUTION

How I Learned to Stop Counting Nose Hairs and Behave Myself on Zoom

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We are still learning Zoom, big time. Making a good impression is easier in person, where the rules are clear, but it's totally doable virtually. So master new skills!

- **Camera.** We all have nose hairs; nobody needs to count yours. So, keep your head angled slightly down, with the camera pointed at the center of your hair line. Try not to lean in as you get excited to talk—close-ups are tricky things!

- **Clothing.** You don't want to look like you just rolled out of bed, even if you did. For a typical business call, dressy casual looks professional and transitions to errands or virtual happy hours. And please, wear on camera what you would wear in public (like the outside public)!

- **Environment.** A quiet, well-lit room can seem mythical with



Kathi Guiney

kids, pets, or spouses at home, but try to find a secluded spot with good acoustics (NOT the bathroom!). The last thing you need is a naked toddler running through your frame.

- **Background.** We'd all rather be in Paris, but simple backgrounds keep the focus on you instead of on the Eiffel Tower springing out of your head.

- **Behavior.** When Zoom snaps to the participant making the most noise, don't get caught making a sandwich or blowing your nose. Keep yourself muted unless you're about to talk, and turn off your video if you need to do anything personal.

The most valuable takeaway? Remember you're on camera. Present an image you're proud of, keep your nose down, shirt ironed, and you'll make your best impression on Zoom every time!

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WORLDWIDE

Impact of Work from Home on Immigration Cases

The pandemic has caused an unparalleled shift to remote working. Even with the recent, upbeat vaccination announcement from Pfizer and Moderna, which brings hopes of a return to previous normalcy, working remotely will continue in a post-pandemic world.

One would think there is a new immigration rule to tackle this new work-from-home phenomenon for employers looking to hire prospective immigrant workers permanently under the EB-2 and EB-3 categories (the two most popular employment-based worker categories). Far from it, the controlling rule on this topic comes from an arcane memo written in 1994 by the then-Administrator for Regional Management for the Department of Labor ("DOL"), Barbara Farmer, referred to as the "Farmer Memo."

The Farmer Memo controls in most EB-2 and EB-3 work-from-home situations where there is no fixed work location. However, the 1994 memo fails to address every work-from-home situation today and in the post-pandemic world. The lack of guidance and instruction from the DOL on this topic has created confusion for both employers and attorneys even before the pandemic, and it appears the confusion will be exacerbated as work-from-home arrangements become more diverse.

Employers looking to hire prospective immigrant workers permanently under the EB-2 and EB-3 categories should consider each worker's work-from-home arrangement and decipher the applicability of the Farmer memo. Below are common scenarios where the Farmer memo may or may not apply:

- Employee works-from-home where there is no fixed work location: Farmer memo applies.
- Employee works-from-home one or multiple days a week and reports to a client site: Farmer memo applies assuming the client site is not predictable i.e. subject to change.
- Employee works-from-home one or multiple days a week and reports to a company office: Farmer memo does not apply assuming the employee reports to the same

company office.

- Employee who work-from-home but whose work requires them to be in a certain geographic area: Farmer memo likely does not apply, and special attention must be given to identifying the exact geographic location of the work.

In addition to deciphering the applicability of the Farmer memo, employers are tasked with describing the work-from-home arrangement in exact terms consistently or risk the case being denied –adding to the uncertainty. Thus, employers who file for labor certifications where there is a work-from-home element should tread thoughtfully.



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COMPANIES THAT CARE AWARDS

Nomination Deadline Extended: December 4, 2020

With all the pain, uncertainty and hardship caused by COVID-19, companies have stepped up to the challenge to meet the needs of the community. The Journal is currently taking nominations for the 2020 Companies That Care Awards that will recognize five caring winners in a Special Report to be published on December 21, 2020. We urge you to nominate or self-nominate a worthy candidate for this prestigious award. More information on pg. 18!

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STAFFING

Hiring Trends for 2021—and the 2021 Outlook for Hiring in Orange County

In the world of hiring trends, 2020 brought a wealth of unexpected and unwanted surprises, notably the lockdown of much of the United States as the coronavirus swept across the nation. The way people live has changed, at least temporarily, and the way companies get work done has changed drastically as well.

While 2021 promises to continue the path into new territory, some hiring trends are starting to make themselves known. Take a look at what you can expect in hiring and business for 2021.

Job Categories on the Rise in 2021 in Orange County

Orange County suffered a lot of layoffs through much of 2020, as did all of California. The aerospace and real estate industries were particularly hard hit, with the hospitality and retail industries also bearing the brunt of the Covid-driven lockdowns and subsequent rounds of layoffs.

However, the real estate market is starting to turn around. While office leasing is still down, most tenants say they plan to bring their business back to the office, and many companies are starting to look for new space.

Anticipated job growth in Orange County in 2021 and going forward lies largely in the construction, health care, and software development industries. In the health care area, job titles on the rise include home health care aides, physician's assistants, phlebotomists, and nurse practitioners, as well as in post-secondary teachers of health care specialties. The greatest increases in raw numbers of job openings are expected to be for software and app developers. In addition, as more and more office-based companies come back to work in person, the need for office positions is expected to increase, as will clean room manufacturing positions.

The Rise of Remote Work

One unanticipated consequence of the coronavirus lockdowns of 2020 was the rise of remote work. Many office-based companies were able to stay open largely because they performed a remarkable pivot, transitioning their office employees to work-from-home programs. This drastic change, accomplished in a matter of days in many cases, helped protect numerous employees from being laid off.

While 60% of employers have stated they expect to bring any furloughed or work-from-home employees back to work, some have not made a final decision on the issue. And in fact, globally, 59% of employers expect to offer some version of flexible or remote work options going forward.

That decision will certainly make their employees happy. The ability to work from home turned out to be a bright spot for many employees, who appreciated the end to onerous commutes and the flexibility and comfort of working from the living room sofa while wearing running shorts (though perhaps with a jacket and tie for those unending Zoom meetings). Parents also have appreciated the flexibility that remote work provides when their kids are participating in distance learning from home.

In fact, a striking 99% of the workforce is interested in continuing to work remotely, viewing the work-from-home option as the new normal. Given this new trend, employers should work with their staffing agencies and HR departments to establish new expectations and guidelines for upcoming hires.

Other Hiring Trends Expected for 2021

Other hiring trends we expect to see are either continuations of trends that have been growing in recent years or new directions prompted by the coronavirus crisis.

Hiring Delays

Some companies have instituted hiring freezes while waiting to see how the coronavirus situation plays out. While it's understandable for businesses in certain sectors, such as hospitality and travel, to hesitate to expand, many other companies have actually grown during 2020. With 2021 right around the corner, organizations that have paused their hiring may want to start thinking to the future so they can find the people they need as the country opens up fully.

The Rise of Technology in Hiring

Tech was already making significant inroads in the hiring process before 2020, and it will continue to do so going forward. 2020 brought us a rise in video interviewing

and virtual onboarding. These technologies should continue into 2021 and even after that, given the cost savings of handling interviews online rather than flying people around the country.

In addition, most companies employ some version of AI in their hiring processes. Smart recruiting tech includes chatbots for initial candidate screening, automated interview scheduling and applicant tracking, AI scanning of resumes for vital keywords, and use of predictive analytics to detect trends early and empower HR and recruitment operations.

Less Emphasis on Traditional Requirements

While many companies are still looking for candidates with specialized experience, many large employers, especially in the tech field, are no longer requiring college degrees from four-year institutions as a baseline job requirement. That's perhaps not surprising, as most software developers today are self-taught and many top tech professionals have no degree. As companies in other industries follow suit in coming years, they can expect to find candidate pools growing larger and increasing in diversity.

Increased Focus on Workplace Diversity

Greater diversity and inclusion in the workplace benefits companies who reap the advantages of wider ranges of talent, different perspectives when approaching problems to solve, and increased employee engagement. The emphasis on ramping up diversity and inclusion has grown throughout 2020, and it's expected to continue to increase in 2021 and onward.

To meet the need for a diverse workforce, HR departments and recruiters are expected to continue to eliminate bias in their hiring decisions and approaches, stepping away from restrictions that may have followed outdated traditions for many years. With previously underrepresented demographics coming to the forefront, hiring choices should open up in new and exciting ways.

Focus on Soft Skills

While technical requirements may be primary considerations for jobs in the tech and health care fields, more than half the jobs in the marketplace today require so-called soft skills. Increasingly, recruiters and HR professionals are considering these communications-based skills as important as the tech skills required in some fields. The top soft skills needed going forward include creativity, persuasion, collaboration, adaptability, and emotional intelligence. The need to recruit people with strong soft skills should affect hiring approaches in 2021.

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