

Mineral™

Top 9 HR Questions of 2020

Introduction

Anyone wearing an HR hat faces more challenges than ever—remote work, increased legal complexity, and of course, the continued impacts of COVID-19. HR has hit a critical moment in time.

For years our team of Mineral Experts has remained dedicated to providing small businesses with expert advice to help them navigate even the toughest HR situations. To address employers' most critical concerns, our team has gathered and answered the most frequently asked HR questions of 2020.

In 2020, Mineral Experts answered over 190,000 questions from mainly small to medium-sized businesses.



What's going on?

Compliance is more complex than ever.

COVID-19 continues to greatly impact the workplace (and workforce). Even before the pandemic, the spread of paid sick leave, increasingly complex wage and hour laws, and a slew of laws aimed at increasing equity in the workplace required small businesses to meet constantly changing legal obligations—making complying with local, state, and federal laws the top challenge of small businesses in 2020.

HR jobs are different than before.

In the past ten years, HR jobs have become more strategic. The most successful HR practitioners are business partners in addition to human resources professionals. However, that combination can be difficult for a practitioner bogged down with day-to-day HR administration or for a business leader who is used to dealing with big picture issues.

Employees are wanting more.

Racial justice and inclusion are soaring to the top of employees' minds. Newer employees are also asking for better benefits, work-life balance, and ethical conduct from their employers. In return, employees have become more loyal and trustworthy.

The most successful HR practitioners are business partners in addition to human resources professionals.

"As part of a small business, I wear MANY hats, and Mineral has helped me significantly cut down the time I spend looking for answers and helps me to get just what I need!" –Janna M., Healthcare Client

1. What do we do if an employee is diagnosed with COVID-19?

We recommend employers take the following steps when an employee is diagnosed with COVID-19:

- 1. Send the infected employee(s) home.** You may have obligations to offer leave under Families First Coronavirus Response Act (FFCRA), your sick leave policy, or state law.
- 2. Notify your other employees.** Inform other employees of possible exposure to COVID-19 in the workplace. Remember that you must maintain the confidentiality of the infected employee, meaning you can't tell other employees who is sick.
- 3. Report as appropriate.** Check local guidance for any obligation to report cases to the public health authority.
- 4. Clean your facility.** Close off any areas used by the sick person for as long as possible and follow the CDC cleaning and disinfection recommendations.
- 5. Allow the employee to return to work after the appropriate period.** How long an infected employee needs to stay away will depend on a few factors and should be determined in conjunction with their health care provider. Employers are advised to check their local health authority websites for additional information or obligations; this can vary based on location.

New Challenges of 2020—It's an understatement to say that COVID-19 created unique challenges for employers on top of already existing obligations. Fortunately, Mineral Experts had the background to provide immediate solutions.



At the onset of COVID-19, Mineral Experts saw over a 700% increase in employers seeking guidance on health & safety compared to the start of the year.



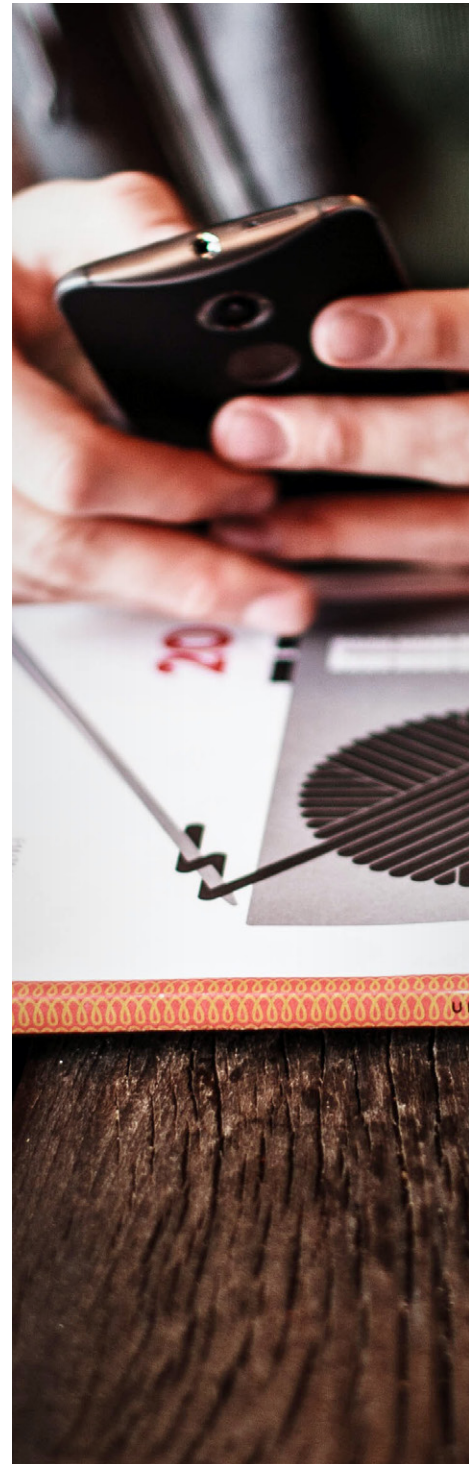
2. Can an employee take Expanded FMLA leave under the FFCRA and regular FMLA leave back to back?

Yes, but only if it doesn't amount to more than 12 weeks. Expanded Family Medical Leave Act (EFMLA) leave does not provide an additional 12 workweeks on top of an employee's 12-week entitlement under the traditional federal Family and Medical Leave Act (FMLA).

As a result, if an employee has already used their 12 weeks of FMLA during their regular 12-month benefit year, the employee would not be entitled to any additional time for school-closure leave. Likewise, if they have used 12 weeks of leave under EFMLA they may not have any FMLA available to use for another qualifying reason in that 12-month period.

It is important to note that if an employee lives and works in a state that offers its own family and medical leave, using EFMLA would likely not reduce an employee's state leave entitlements. We suggest reviewing your state's laws for additional information on what kinds of leaves are available to employees.

June 2020: 98% of employers said they needed some level of help with COVID-19 legislation.



3. My employee is refusing to come back to work. What are my options?

We suggest talking to the employee about why they don't want to return. You may be able to resolve their concerns just by explaining the safety measures you are taking (or will allow them to take) or by offering them a simple solution, like working a less busy shift, or working from home.

If the employee still refuses work, see if you can get a statement from them in writing that they are declining work. If you can't get something from them in writing, document your attempts to reach the employee and return them to work.

Sending a "Return to Work" letter is helpful. It should include a deadline for the employee to respond, and make it clear that if you do not receive a response back by its due date that you will consider them to have turned down your offer to return to work and the company will end their employment.

You may be able to resolve their concerns just by explaining the safety measures you are taking.

"Having a Mineral Expert is extremely helpful in any employee relations issue. The employer has someone to discuss a realistic approach with, coach on communication tactics as well as strategic support to mitigate risks." –Jen Mestaz-Heiser, Mineral Manager, HR Services

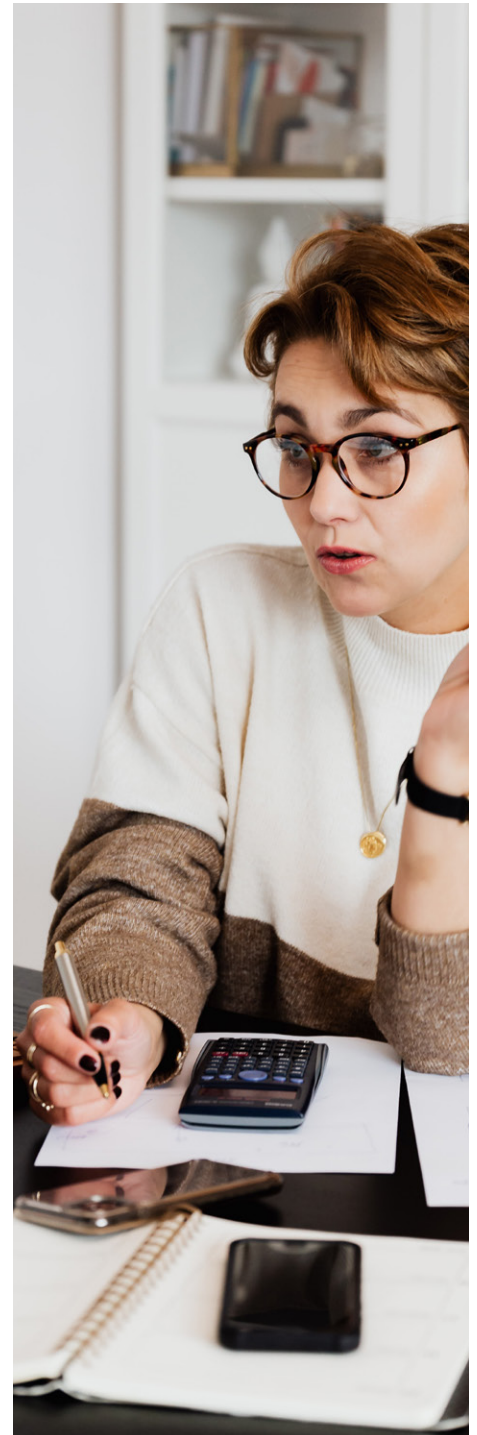
Evolved challenges—In addition to direct impacts, COVID-19 transformed common HR issues, like compensation, into complex problems on a much broader scale. Mineral Experts adapt their guidance to meet these challenges as well.

4. What expenses are we required to reimburse for employees working from home?

The answer will depend on the state in which your employees are located and performing work. Some states will require that employers reimburse employees for the expenses that they incur while performing duties associated with the role, or for the use of personal equipment and other costs associated with working from home.

Some of these potentially reimbursable costs may include use of a personal cell phone, use of their home internet connection, and use of personal computer equipment. Several states and localities have laws that are very specific about reimbursement, including California, Illinois, Montana, and Washington D.C.

State and federal laws and regulations can get technical. In many cases, Mineral Experts will follow up with resources found in the platform where legal experts analyze and summarize state laws.



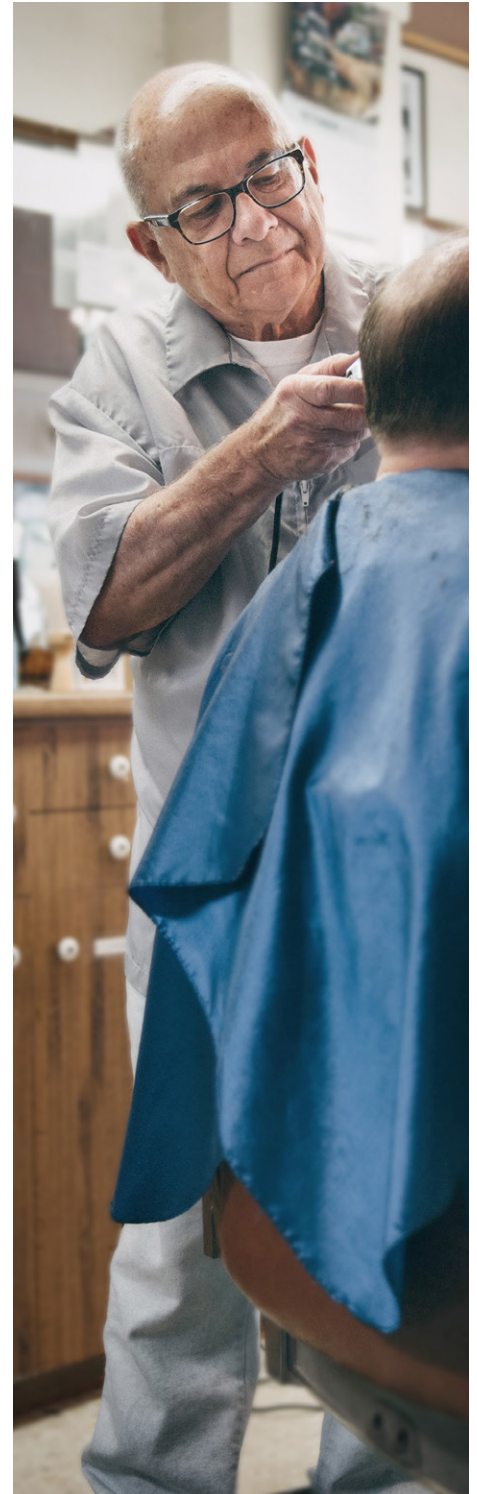
5. Are we required to return all employees on furlough or layoff?

Typically, no. But keep in mind that the decision not to return an employee from furlough constitutes a termination of employment. Employers are advised to communicate a legitimate, business need that justifies the reason for separation, and should be aware that any decision to terminate an employee involves risk, even if they were not currently working.

If slowed business demand or other COVID-19 related circumstances require that you reopen with a limited staff only, you should use nondiscriminatory criteria to select the employees that will not be invited to return to work. Note that employment decisions based on potential risks related to COVID-19, such as pregnancy, age, or disability are discriminatory.

No matter what non-discriminatory criteria you base your decision on, ensure that you have documentation to back up your decisions.

"Every person I've talked to has provided expert advice and is clearly focused on getting me the answers I need. As a result, I have the confidence to make policies and decisions with the information I receive from Mineral." –Deborah C., Manufacturing Client



6. Can we reduce employee pay? Does it matter if they are exempt or non-exempt?

Yes, you can reduce an employee's rate of pay (as long as it's not for discriminatory reasons), so long as the change is not applied retroactively.

Non-exempt employees (those entitled to overtime)

A non-exempt employee's new rate of pay must still meet the applicable federal, state, or local minimum wage and they must be given notice of the change to their rate of pay.

Exempt employees (those not entitled to overtime)

An exempt employee's new salary must still be at or above the federal or state minimum for exempt employees. The federal minimum salary is \$684 per week. Several states have weekly minimums that are higher than that. The minimum may not be prorated based on hours worked.

Exempt employee reclassification

If an exempt employee has so little work to do that it doesn't make sense to pay them the federal or state minimum (or you simply cannot afford to), they can be reclassified as a non-exempt employee and be paid by the hour instead.

Employees with contracts or CBAs

If employees have employment contracts or are subject to collective bargaining agreements, you should consult with an attorney before making any changes to compensation.

Mineral Experts also want employers to understand HR basics before issues arise. They host webinars, including several covering wage and hour topics.



7. How should we respond to an employee who posts offensive, derogatory, or racist commentary on their social media?

Don't ignore it. We recommend responding to the report, whether it's made by an employee, customer, or vendor. Not responding could lead to an escalation of the situation.

Investigate promptly: Inform the person who reported the statement that you will investigate the situation. Our general recommendation is to take action in proportion to the severity of the statement as if it were made in the workplace.

Follow up: Assuming that you take disciplinary action against the employee for their comment, letting the person that contacted you know that action was taken might help de-escalate the situation.

Discipline and termination always come with some level of liability risk. But you can reduce that risk by having documentation that shows the legitimate business reason for the discipline or termination.

Top Five Categories of Frequently Asked HR Questions in 2020:

1. Employment laws
2. Health and safety
3. Handbook and policies
4. Termination
5. Leaves of absence

Persistent Challenges

Despite new and transformed HR challenges, typical employer challenges have persisted throughout the years. This is the bread and butter of Mineral.

8. Can I terminate an employee while they're on FMLA?

If you would have terminated the employee anyway, regardless of the FMLA leave, then yes. However, unless you're conducting a layoff of an entire department or closing the location where the employee works and not relocating the staff, it can be very difficult to prove that the employee's leave was not a motivating factor in your decision.

To mitigate the risk of claims of discrimination or retaliation, the reason for terminating the employee should be well documented and indicate the legitimate business reason that the decision was made and explain why the decision would have been made regardless of the employee's leave.

Documenting your reasoning will assist in mitigating risk associated with a claim of discrimination or retaliation. If there are still concerns, we suggest reviewing this decision with legal counsel before it's made.

From March to April, Mineral Experts saw a 147% increase in employers asking questions related to termination. After a lull, it rose to be the second most common topic in June 2020.



9. Can we offer different benefits to different employees?

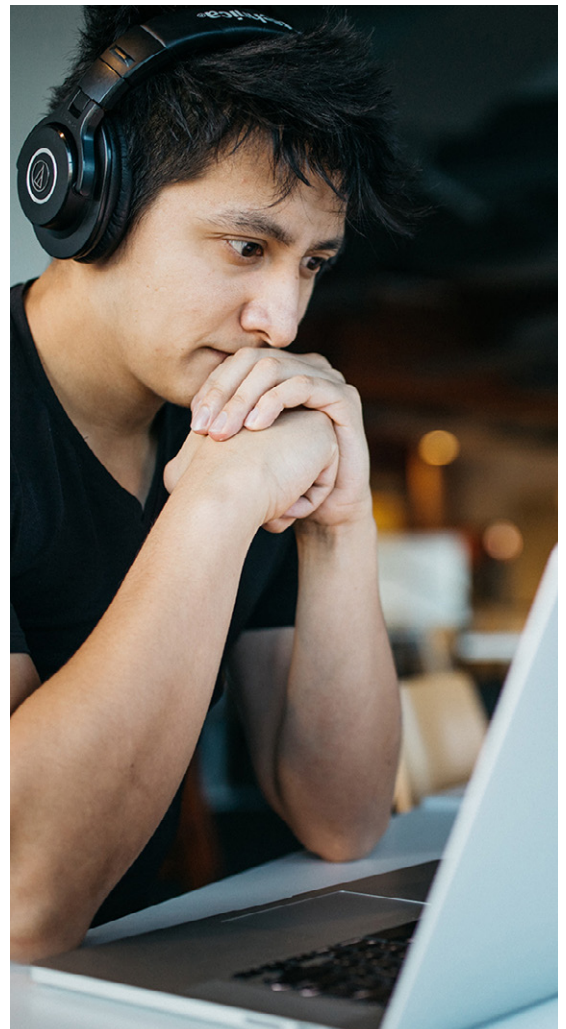
Very generally, benefits offerings and cost-sharing can be based on legitimate classifications of employees.

Discrimination in benefit programs typically refers to eligibility, benefits, or cost-sharing features that favor highly compensated employees (HCEs) or “key employees.” Sometimes, though, it’s as simple as a difference between who gets two weeks of PTO and who gets three, or who is allowed to work from home and who is not.

Even for those benefits, employers need to be sure they are based on legitimate employee classifications (like exempt v. non-exempt). It’s illegal for employers to discriminate based on protected classifications, like race or gender, when it comes to benefits.

For group insurance contracts, eligibility can be based on date of hire, length of service, job title, etc. (basically any employment-related criteria) but must be clearly explained in the plan materials, including plan documents and summary plan descriptions.

“I’ve been in HR for over 20 years but still find myself looking for help on HR questions. As a generalist, ThinkHR provides access to subject matter experts that can answer tough or unique questions. I am able to find answers to difficult questions with ease and much faster than searching the internet.” –Jill B., Retail Client



Conclusion

With a constantly changing HR and compliance landscape, there are going to be new issues as your organization grows. You'll want experts on your side to guide you. By getting that support, anyone wearing an HR hat can be a more strategic leader who can provide immense value to both employees and their organization.

Mineral Experts are

Experienced

Mineral Experts are HR certified (by HRCI, SHRM, or both) and average 18 years of experience in the HR trenches.

Accessible

Mineral Experts are available by phone, email, and mobile app every business day for employers in all 50 states.

Engaged

Mineral Experts have addressed over 3.7 million HR, compliance, and benefits issues for over a decade.

For more guidance and support, [Log In](#) to the Mineral Platform.