



## 2019 NESD SHRM Holiday Social!

Please join us for a relaxing and fun evening featuring pizza, beer & root beer tasting, hosted by Dempsey's Brewers. We will also announce the 2019 HR Professional of the Year and the 2020 NESD SHRM Board.

**Tuesday, 12/3/2019 • 4pm—6pm**  
**Dempsey's Brewery Pub, Watertown**

You will not want to miss this event!

**FREE** to NESD SHRM Members.

To RSVP, visit <http://nesd.shrm.org> under the Events Tab by **Friday, 11/29/2019**.

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# Beware of Workplace Ageism Claims Stemming from 'OK, Boomer'

**November 20, 2019**— If you've logged into your social media accounts recently, you've probably seen the memes and hashtags centered on an apparent generational dispute fueled by dismissive comments, such as "OK, boomer" and "OK, millennial." So what happens if the rhetoric finds its way into your workplace?

Even if the phrase "OK, boomer" isn't meant to be insulting, it is targeted at members of the Baby Boomer generation who are currently around ages 55 to 75. Managers need to be aware that the federal Age Discrimination in Employment Act (ADEA) protects workers age 40 and older from discrimination on the basis of age in hiring, promotion, discharge, compensation and other employment decisions. The ADEA covers employers with at least 20 employees, and similar state laws may apply to smaller businesses and younger workers.

We've rounded up articles and resources from *SHRM Online* and other trusted media outlets on this topic.

## What Does It Mean?

"OK, boomer" is an expression that some millennials (who are in their twenties and thirties) and members of Generation Z (who are in their teens and early twenties) use as a "digital eyeroll" when older generations don't understand their actions. "The older generations grew up with a certain mind-set, and we have a different perspective," said 19-year-old Shannon O'Connor to *The New York Times*. She said, for instance, boomers may not "believe people can get jobs with dyed hair."

## Is There Really a Problem with the Phrase?

The "OK, boomer" expression gained popularity after Chloe Swarbrick, a 25-year-old member of New Zealand's Green Party, used it in front of Parliament during a conversation about climate change after she was heckled by an older member. "Ageism is undoubtedly a very real and serious issue we are facing in workplaces," said Tim Sackett, SHRM-SCP, president of HRU Technical Resources, an IT and engineering staffing firm in Lansing, Mich. But, he noted, "Chloe and Gen Z are fed up!" Younger generations have been criticized by older generations for the last decade, and now they're striking back. "I'm not a fan of name-calling on either side," Sackett said. "I don't like it when we try to throw an entire generation into a bucket, because the moment you do that you meet someone from that generation that believes in the exact same things you do and might even be doing more to fight for those beliefs than you are. Chloe knows this, but she was in a passionate speech to save her planet."

## More Generations Are Working Together

Employers may be particularly concerned about a generational disconnect because five generations—including the Silent Generation (who are in their seventies and eighties) and Generation X (who are in their forties and fifties)—are working together for the first time in history. But is "OK, boomer" just a social media spectacle that doesn't reflect a real generational divide? Susan Weinstock, a vice president at AARP, said she was a bit surprised by the feud. "[W]e have a lot of research that shows how much workers actually like to work together no matter the generation," she said.

## Connect Employees Across Generations

Successfully assimilating each generation in the workplace requires that HR professionals make time to get to know their employees. When seeking ways to connect employees across all generations most workers of every age want to feel respected, be listened to, have opportunities for mentoring, understand the big picture, exchange ideas, and receive effective communication and positive feedback. **(continued on next page)**

*Beware of Workplace Ageism (continued from previous page)*

## **Avoid Ageism**

Today's older workers are better educated and living longer than any previous generation. They also want to remain in the workforce longer, but discrimination and outdated assumptions are making that a tricky proposition for many experienced employees. Here's what employers can do to help. Visit:

<https://www.shrm.org/hr-today/news/all-things-work/pages/how-to-avoid-ageism.aspx>

## **Employing Older Workers Can Help Your Business**

In a tight labor market where it can be difficult to compete for talent, more employers are looking carefully at how to leverage the skills and experiences of older workers. They're also helping older workers better understand the job opportunities available, as well as how those workers can help themselves by developing late-career working and retirement plans.

*Source: Lisa Nagele-Piazza, J.D., SHRM-SCP, via SHRM.org (online article)*

## **New Study Says Age Discrimination Remains a Persistent Issue for Employers**

**Simple solutions exist, including recruitment and hiring strategies that avoid age bias by seeking workers of all ages and not limiting qualifications based on age or experience.**

**August 20, 2019**—Insurance company Hiscox just released its 2019 Ageism in the Workplace Study, which revealed some sobering statistics about the growing problem of age discrimination for American employers.

- The number of age-related discrimination charges filed with employers and the EEOC by workers aged 65-plus doubled from 1990 to 2017.
- 44 percent of employees report that they or someone they know experienced age discrimination in the workplace.
- 21 percent report they faced age discrimination themselves.
- 36 percent feel their age has prevented them from getting a job since turning 40.
- 26 percent feel there is some risk they could lose their current job because of age.
- Only 40 percent who experienced age discrimination filed a charge or complaint.
- Employers paid \$810.4 million to settle age discrimination charges filed with the EEOC between 2010 and 2018 (excluding litigation).

These numbers are only going to get worse. By 2024, workers age 55 and older will represent 25 percent of the nation's workforce, with the fastest annual growth rates among those aged 65 and older. Indeed, according to the Hiscox survey, 67 percent of surveyed workers age 40-65 plan to continue to work after they turn 66.

This trend is not without its cost to employers. Age discrimination hurts employers, and I'm not just talking about the \$810 million paid in settlement costs.

- It demotivates employees, which can hurt productivity, customer service, and product quality.
- It causes a loss of talent and institutional knowledge, due to experienced workers leaving from a stalled career or hostile environment.
- It causes employers to miss the opportunity of hiring and retaining workers who possess knowledge, experience, good judgment, and commitment to the job.

To read more, visit: <https://www.workforce.com/2019/08/20/new-study-says-age-discrimination-remains-a-persistent-issue-for-employers/>

*Source: Jon Hyman via Workforce.com (online article)*

# DOL Speeds Up Plans to Seek Comments on Improving the FMLA

**November 21, 2019**—The U.S. Department of Labor (DOL) may seek comments sooner than originally planned on ways to improve the Family and Medical Leave Act (FMLA) to reduce administrative burdens on employers. Earlier this year, the DOL estimated it would request information on this topic in April 2020. But in this fall's regulatory agenda, issued Nov. 20, the DOL said it may seek comments on improving the FMLA as soon as this month.

The Society for Human Resource Management (SHRM) "is pleased that the review of the FMLA has been moved up," said Nancy Hammer, SHRM's vice president, regulatory and judicial engagement. "The FMLA has long held the status as the workplace law that yields the most questions from SHRM members. We look forward to working with the DOL to make improvements to FMLA implementation."

The DOL, Equal Employment Opportunity Commission (EEOC) and other agencies also outlined expected next steps in the rulemaking process, including a new proposed rule in the coming months on who is a joint employer under equal employment opportunity laws. In addition, the DOL and National Labor Relations Board plan to issue soon final rules on who is a joint employer under the Fair Labor Standards Act and National Labor Relations Act, respectively.

The agencies must issue an agenda twice a year listing all regulations in the works. However, the estimated release dates of the regulatory items can change.

## **Intermittent Leave, Certification Can Be Challenging**

The DOL should take a close look at the impact of intermittent FMLA leave on employers, said Jeff Nowak, an attorney with Littler in Chicago. "Intermittent leave lends itself to abuse," he added.

Michael Shetterly, an attorney with Ogletree Deakins in Greenville, S.C., said the way the regulations are now written allows some workers to try to convert their full-time jobs into permanent part-time jobs, even though that wasn't the intention of the law

Nowak said that the department should issue stronger language supporting employers' right to enforce call-in procedures. The DOL currently indicates that an employee need only identify an unusual circumstance to explain why he or she couldn't follow the procedure, which gives workers too much wiggle room, he stated.

Specialists should be required to complete employees' medical certification in some circumstances, such as when there are serious mental conditions, he said. A general practitioner may not be able to accurately diagnose such conditions.

Employers also would like greater flexibility to communicate with physicians to determine the extent of serious health conditions and the frequency and duration of absences. Right now, "employees can effectively stone-wall" when employers seek that information, Nowak said.

He also would like to see more precise consequences for workers when they fail to turn in a medical certification.

Employers should be able to request second opinions when considering recertifications, Nowak suggested. Recertifications are permitted in limited circumstances, such as when an employee seeks an extension of leave, when there has been a significant change in the frequency and duration of leave, or if the employee seems to be misusing time off. *(continued on next page)*

## ***DOL Speeds Up Plans to Seek Comments on Improving the FMLA (continued from previous page)***

Nowak also said third opinions should be removed from the certification process when second opinions are conclusive. Second and third opinions are at the employers' expense.

The FMLA regulations state that employers can't regularly use the services of a health care provider furnishing a second opinion. "What does that mean?" asked Scott Macdonald, Esq., SHRM-SCP, a senior HR management consultant with The Human Resource Consortium in New Haven, Conn. He hopes for clarification from the DOL.

## **Other Rulemaking**

Here are other rulemaking priorities from the DOL and the EEOC and their projected completion dates:

- The EEOC is considering a new rule on pay data sorted by job category, race, ethnicity and sex to enforce Title VII of the Civil Rights Act of 1964. An Advance Notice of Proposed Rulemaking is currently anticipated in September 2020. This follows an announcement by the agency that it would drop its current pay-data requirement, as well as litigation over pay data.
- The EEOC will address the interaction between the Americans with Disabilities Act and wellness programs in a proposed rule now tentatively slated for January 2020. Employers have been left in limbo without a rule since a court struck down a prior regulation from the agency.
- The EEOC will explain in a proposed rule, expected next month, when an entity qualifies as a joint employer under federal equal employment opportunity laws, such as Title VII, the Equal Pay Act, the Age Discrimination in Employment Act and Americans with Disabilities Act.
- The DOL may issue a final rule next month on who is a joint employer under the Fair Labor Standards Act.
- The National Labor Relations Board also plans to finalize next month its rule on who is a joint employer under the National Labor Relations Act.
- The board may issue a final rule on union elections this month.
- A final rule on H-2A nonimmigrant visa programs, which is anticipated to result in an increase in the hiring of temporary agricultural workers, is now slated for publication by the DOL in April 2020. A proposed rule was issued in July.
- The DOL anticipates issuing a final rule on apprenticeship programs in April 2020. The department issued a proposed rule in June. The rule would establish industry-recognized programs—customizable apprenticeship models that the DOL has called "a new pathway for the expansion of apprenticeships."
- The DOL may issue a final rule as soon as this month on what constitutes a "regular rate" of pay, which is used to calculate overtime premiums under the Fair Labor Standards Act.
- The DOL's Office of Federal Contract Compliance Programs plans to issue proposed revisions to its nondiscrimination and affirmative action regulations, perhaps this month.
- U.S. Citizenship and Immigration Services plans to publish a proposed rule in September 2020 to improve the L<sup>1</sup> visa program, which is for intracompany transfers.

*Source: Allen Smith, J.D., via SHRM.org (online article)*



# 5 stories to help HR pros get social media right



**HR professionals are very much online, but that doesn't mean the two always play nice.**

**November, 20, 2019**—HR professionals are very much online, but that doesn't mean the two always play nice. Sure, it's clear HR pros love to encourage one another on Twitter and follow each other's careers on LinkedIn. What happens, though, when a recruiter's feed is interrupted by an employee's shockingly inappropriate tirade? What's HR to do when they stumble upon (or unearth) some not-so-flattering photos of an applicant's most recent vacation?

These are questions HR has to answer regularly. To understand how to best approach social media, HR Dive looked into the most noteworthy instances of work-related social media uproar from 2019 and asked a few attorneys and professionals about the boundaries of life online.

▶ **Resource Actions: How social media challenged HR in 2019**

By Kathryn Moody, Ryan Golden • Nov. 14, 2019—An FMLA fishing trip and an Elmo meme showed how platforms can create unintended workplace consequences.

<https://www.hrdive.com/news/resource-actions-how-social-media-challenged-hr-in-2019-1/567179/>

▶ **Can — or should — HR fire an employee because of a social media post?**

By Pamela DeLoatch • Nov. 18, 2019—"You're going to have to discharge everybody or rethink what kind of conduct is sufficient to enforce adverse employment action," one attorney told HR Dive.

<https://www.hrdive.com/news/can-or-should-hr-fire-an-employee-because-of-a-social-media-post/566967/>

▶ **Pretend your boss is watching: How HR pros should manage their own social media**

By Kate Tornone • Nov. 21, 2019—In this installment of "Other Duties as Assigned," HR Dive's lead editor, Kate Tornone, discusses best practices for HR pros on LinkedIn, Facebook and Twitter.

<https://www.hrdive.com/news/pretend-your-boss-is-watching-how-hr-pros-should-manage-their-own-social-m/567656/>

▶ **Most employers say they've passed on a candidate based on social media**

By Katie Clarey • Aug. 15, 2018—Social media can be a helpful tool in the vetting process, but hiring managers need some guidelines to stay compliant.

<https://www.hrdive.com/news/most-employers-say-theyve-passed-on-a-candidate-based-on-social-media/530082/>

▶ **Half of candidates delete old social media profiles to hide them from employers**

By Valerie Bolden-Barrett • Aug. 21, 2019—Sixty-six percent of survey respondents said they are most likely to purge old posts or profiles from Facebook — the platform most said they want hidden.

<https://www.hrdive.com/news/half-of-candidates-delete-old-social-media-profiles-to-hide-them-from-emplo/561252/>

*Source: HR News via hrdive.com (online publication)*

# 9 in 10 Workers Admit Going to Work Sick

Some can't afford to take sick time; others fear repercussions from managers.



**November 7, 2019**—Year after year, as cold and flu season approaches, employers, their managers and their HR departments remind workers to stay home if they're sick.

Year after year, employees come to work anyway—with bad colds, full-blown flu and other maladies.

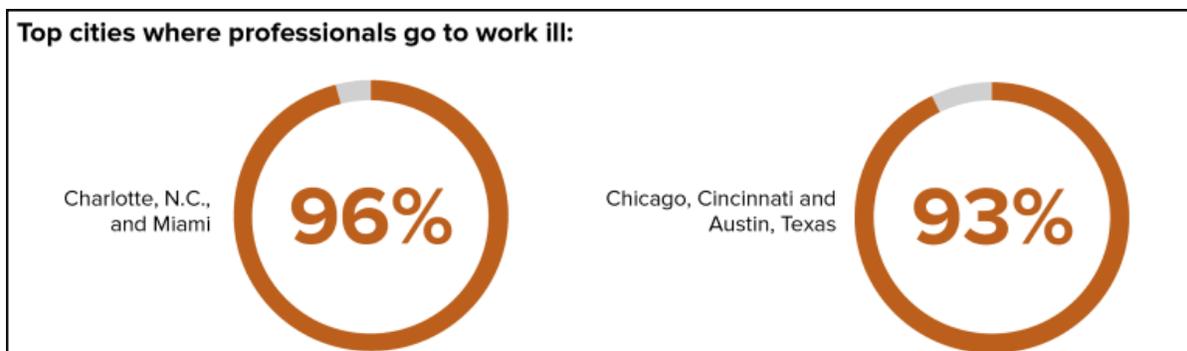
In fact, 9 in 10 employees admit going to work sick, according to new research from global staffing firm Accountemps, a Robert Half company.

They do it despite warnings that by coming to work, sick employees risk infecting others, who, in turn, can go home and infect their families. All it takes are cold or flu germs left on the workplace's microwave or elevator buttons, bathroom faucet handles, coffee machines or refrigerator handles to spread illness.

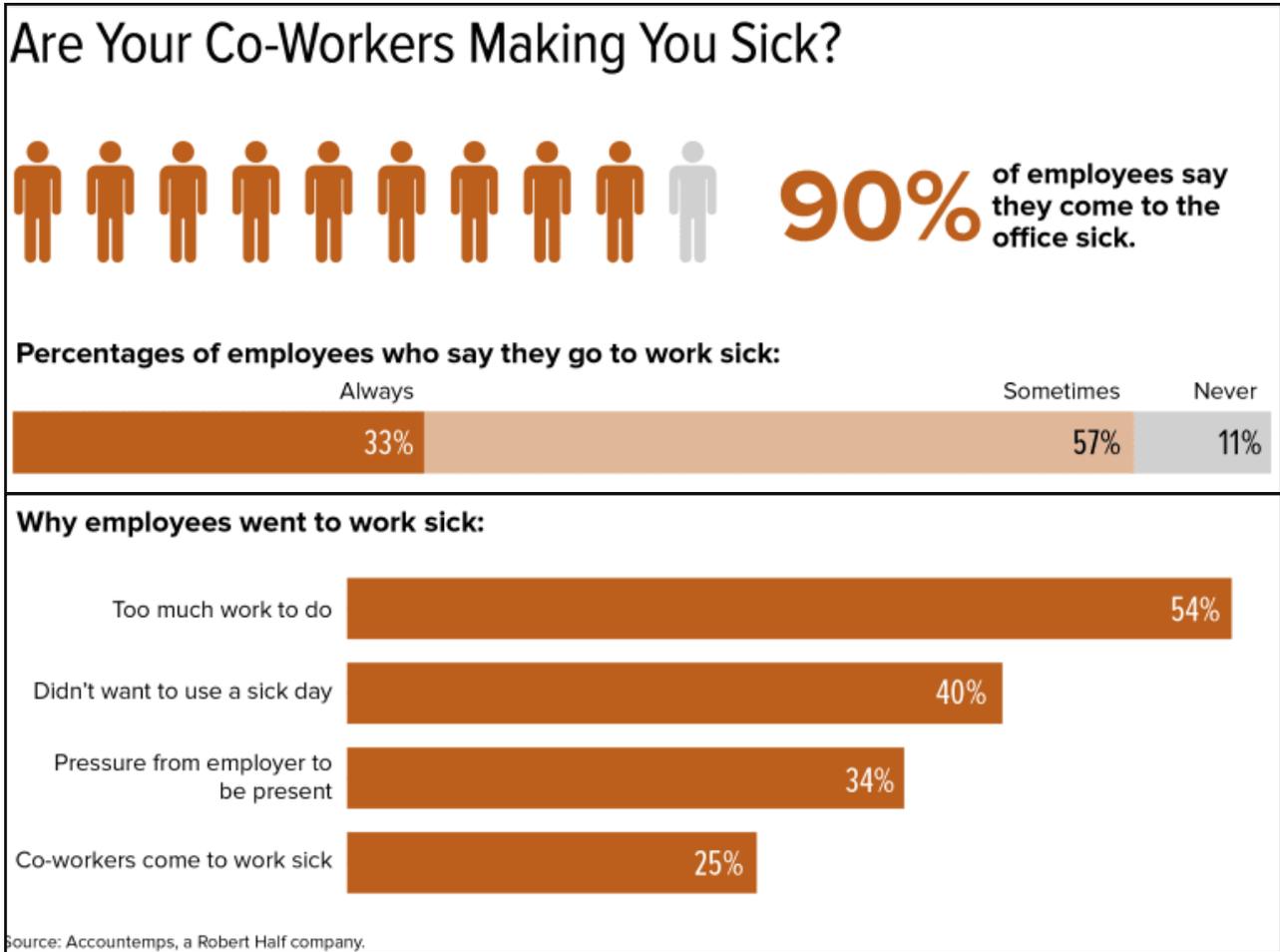
Accountemps' online survey, which included responses from 2,800 workers employed in offices in 28 U.S. cities, found that:

- One-third said they *always* go to the office with cold or flu symptoms.
- Most employees who admitted to going to work while sick live in Charlotte, N.C., and Miami.
- 54 percent of those who report to the office with cold or flu symptoms said they do so because they have too much work to do. Most respondents who said they report to the office while ill because of an overwhelming workload were from New York City, Minneapolis and Miami.
- 40 percent said they went to work ill because they didn't want to use a sick day.
- Miami, Phoenix and San Diego professionals felt the most pressure from their bosses to be present when sick.
- More employees ages 25 to 40 reported going to work sick than respondents of other ages.

**(continued on next page)**



9 in 10 Workers Admit Going to Work Sick (continued from previous page)



"Whether it's due to large workloads, pressure from the boss or because they can't afford to take time off, it's all too common for employees to come to [work] feeling sick when they really should be resting," said Michael Steinitz, senior executive director of Accountemps. "Staying home when you've got a cold or the flu is the best way to avoid spreading germs to others and fight the illness faster."

That's easier said than done, however.

### Too Much Pressure to Go to Work

One of the biggest reasons that people show up to work sick, according to workplace experts, is because they're afraid.

Afraid that they'll miss out on pay by staying home. Afraid that managers will suspect the sick worker is just slacking off. Afraid that too much absenteeism will lead to a negative performance review.

"I believe the prevailing answer is money," said Terri L. Rhodes, CEO of the San Diego-based Disability Management Employer Coalition. "Many employees do not have access to sick leave or have exhausted all available sick leave. The majority of workers cannot take time off without pay."

While there's a proliferation of state and local sick-leave laws, employers can feel burdened by the significant administrative and compliance challenges that come with them. In fact, nearly half of states have laws to wholly or partly prohibit local paid-sick-leave ordinances. The theory behind this is that less regulation and fewer administrative burdens on employers is better for the economy. **(continued on next page)**

## 9 in 10 Workers Admit Going to Work Sick (continued from previous page)

"There is currently a lot of discussion around employees not being able to miss work due to financial issues," said Daniel R. Stern, an attorney with labor and employment law firm Dykema in San Antonio. "If employers don't provide paid time for illness or injury, employees may have to come to work to avoid losing pay."

### Messages from the Top

Workers sometimes perceive—whether the perception is real or imagined—that managers question whether the employee is actually ill or just doesn't want to work.

"Often, when employees are absent, co-workers may comment on whether they believe the absence is legitimate or made up to get some extra time off," Stern said.

Workers may also fear that managers frown on absences, even if they are related to illness.

"Management may make comments about how important it is for all employees to be at work and for everyone to do their part," Stern said. "You very seldom hear of a company president announcing during flu season that employees are encouraged to or must stay home if feeling ill."

Rhodes added, "Unfortunately, there is still a widespread mentality in many business cultures that if it's just a cold, for example, be tough. A change in leadership comes from the top; senior leaders need to say it's OK to stay home when sick, and then demonstrate it."

But there's little doubt that if the boss isn't leading by example—and he or she is coming to work sick—then nonmanagement employees will feel they must do the same.

"Bosses should set an example by taking time off when they're under the weather, encouraging employees to do the same and offering those with minor ailments the ability to work from home," Steinitz said. "Bringing in temporary professionals can keep assignments on track during staff absences."

Finally, attendance, or lack of it, is addressed in many annual performance reviews. An employee may avoid being out for extended periods—even if illness warrants the absence—for fear the manager might question his or her dedication or work ethic.

"Attendance is usually a factor in employee evaluations, and some employees want to avoid anything in the evaluation that is negative," Stern said.

*Source: Dana Wilkie via SHRM.org (online article)*

your work

is going to fill a large part of your life,  
and the only way to be truly satisfied is to

do what you believe is

great work.

and the only way to do

great work

is to love what you do.

— Steve Jobs

“CHOOSE A JOB YOU

LOVE

and you will never have to work a day

IN YOUR LIFE”

-Confucius

“People Work For  
Money  
But Go The Extra Mile  
For Recognition,  
Praise, and Rewards.”

Dale Carnegie

“Do the best you can  
until you know better.  
Then, when you know  
better, do better.”

- Maya Angelou

The secret of getting ahead  
is getting started.

-Mark Twain

## Form I-9: Expired 8/31/2019 (extension expected soon)

The federal government's Form I-9, used by HR departments across the country to verify workers' employment eligibility, expired on August 31, 2019.

The Department of Homeland Security (DHS) is expected to extend the current version of the form (marked 8/31/2019) without changes, although minor clarifications will be made to the form's instructions. The agency has directed employers to continue using the current version of the form despite the expiration date until a revised version is available.

*Source: SHRM via SHRM.org (online publication)*

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## 7 Workplace Trends for 2020

### What Employers and Employees Can Expect in 2020 and Beyond

**August 6, 2019**—2020 isn't far off. The workplace continues to evolve each year in hopes of providing a more fulfilling workspace for employees. The bottom line remains to make money and achieving success, but employers are learning that there are more efficient ways to do that. Workplace trends once considered emerging, are transitioning to commonplace.

Employees who are satisfied with their job are more likely to deliver positive results. It might seem like an obvious conclusion, but wasn't always accepted as the norm. After all, work ethic and motivation are extremely important, but finding ways to identify and extract them is crucial. Consider the following workplace trends for 2020.

**1) Artificial Intelligence**—Many are stressing about robots taking their jobs, but what if AI could enhance the employee experience? That's precisely the trend we expect to see in 2020. Collaboration with AI is going to be huge going forward. It is critical that the human experience dictates the function of artificial intelligence and uses it to maximize workflow and increase efficiency for businesses.

**2) Environmental Consciousness**—When reducing the carbon footprint companies have historically looked at the issue as someone else's problem. The truth is coming to light that businesses of all kinds can make an impact. When managing large groups of people, or even small groups, thought leaders can dictate human behavior, to some degree. Encouraging recycling, limiting commutes, and other eco-friendly legislation can make a difference.

**3) Schedule Flexibility**—The traditional workplace was very controlled. After all, people became accustomed to routines. The newest generation of employees values flexibility in their scheduling. As the saying goes; adapt or die. Getting the best out of workers requires some understanding of what motivates them, and what puts them in the best positions to succeed. Accountability remains a critical element to management, but unconventional methods can achieve it.

**4) Mental Health Awareness**—Satisfied employees typically perform better. What companies have learned is that mental health is a big part of the performance. There is not much satisfaction in feeling miserable in your job position. Once again, balancing accountability and understanding can be a challenge for some employers, but making mental health resources available is an excellent way to start. Making the workplace feel like an asset rather than a liability can improve performance.

To read the last three trends, please visit: <https://thriveglobal.com/stories/7-workplace-trends-for-2020/>.

*Source: John Francis via ThriveGlobal.com (online article)*



Join or renew your SHRM Membership between now and Tuesday, 12/31/2019, to save \$20. Enter promo code **STATE20** and get access to the HR tools and resources to help you be confident, compliant and current on all things HR at [www.shrm.org](http://www.shrm.org)!

## 2019 SoDak SHRM State Leadership Conference

October 3—4, 2019 • Hampton Inn, Watertown, SD

This conference brought together State Council and Chapter Board Members to energize and engage our leaders through brainstorming sessions, activities and networking to help shape our SoDak SHRM State Council initiatives for the upcoming new year 2020. See the fun we had!



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## TURNING OBSTACLES INTO OPPORTUNITIES TAKES TEAMWORK ...

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[shrmfoundation.org/teamempower](https://shrmfoundation.org/teamempower)



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## Contact Us

**We are a network of HR Professionals. If you have a question, concern or inquiry, please reach out to one or all of us. We are here to help and teach each other!**

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### *Our last-minute tidbits and events:*

- ▶ **STATE20 Discount Code:** another reminder to use the promo code **STATE20** to take \$20 off a new or renewing SHRM annual membership. Please share this special offer through the end of 2019.
- ▶ **2019 NESD SHRM Wage Survey** is now available. Please contact Laurie Gates to request a copy. Payment must be made to the Watertown Chamber of Commerce.
- ▶ **2020 S.D. State SHRM Conference Planning Committee:** if you would like to get involved and volunteer, please email Paige Sullivan at [psullivan@watertownbox.com](mailto:psullivan@watertownbox.com).
- ▶ Are you looking to get **HRCI or SHRM certified** soon? Are you looking for a local study group to help you? If so, contact Tammy Davis at [tammy.davis@we-online.com](mailto:tammy.davis@we-online.com) for more information.

### **HR HUMOR: only HR will fully understand and appreciate these pics!**

