RISK INSIGHTS

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Labor Shortages and Business Liability Risks

The past year has seen labor shortages across industry lines. According to a recent study from the Society for Human Resource Management, nearly 90% of businesses are having a hard time filling open positions. These shortages have resulted from various factors, many of which are related to individuals reevaluating their employment priorities due to the COVID-19 pandemic.

Such shortages can carry numerous consequences for businesses. Specifically, a depleted workforce increases the likelihood of current employees being overworked and employers having to hire inexperienced or less qualified workers to fill available positions. Together, these issues can cause employees to be prone to making mistakes or getting involved in accidents on the job—thus creating elevated business liability risks. With this in mind, it's critical for employers to do what they can to mitigate labor shortages and related liability concerns.

Keep reading to better understand the factors contributing to the ongoing labor crisis, how employee shortages impact business liability exposures and steps employers can take to help minimize these workforce concerns.

Factors Contributing to the Labor Crisis

At the initial onset of the COVID-19 pandemic, a significant number of workers lost their jobs, resulting in record-high unemployment rates. As the economy reopened and job availability returned, however, many individuals reassessed their employment arrangements and opted to stay out of the workforce. In fact, the latest employment data revealed that the proportion of people who have been out of work for six months or longer is at its highest point in 60 years. Subsequently, there were nearly 11 million unfilled positions in the United States at the end of 2021.

Further, existing employees have begun quitting their jobs at elevated rates. According to the Bureau of Labor Statistics (BLS), over 4 million Americans voluntarily left their positions each month in the latter half of 2021. This trend, which has been termed "The Great Resignation," has only compounded the labor crisis.

There are several reasons why individuals have opted to remain unemployed or quit their jobs over the past year, including the following:

- **Tending to caregiving responsibilities**—The pandemic caused many individuals—primarily women—to become primary caregivers for their loved ones (e.g., children or elderly relatives). These added caregiving responsibilities have made it increasingly difficult for these individuals to return to their jobs. BLS data confirmed that over 3 million women have exited the workforce since the pandemic began.
- **Deciding to retire early**—Because COVID-19 can lead to more severe illness for older individuals, the pandemic has motivated some employees nearing retirement age to end their careers earlier than previously planned instead of facing the risks associated with going into work.
- **Seeking new business opportunities**—A growing number of individuals have shifted careers or started new business ventures since the start of the pandemic, leaving their old jobs behind. Recent research found that 25% of employees have made a career change during the pandemic, while new

business applications jumped by nearly 27% between 2019 and 2020.

- **Fearing potential COVID-19 risks**—As COVID-19 cases continue to fluctuate and new variants emerge, some employees have remained out of work due to ongoing health and safety concerns. Such concerns are especially prevalent among those who have careers that require them to work in close contact with others or within enclosed spaces.
- **Feeling unsupported**—Some employees have left their jobs after experiencing prolonged burnout while working during the pandemic and receiving minimal support from their employers. A larger number of employees have also cited inadequate pay, poor benefits and a lack of work flexibility (e.g., remote capabilities and flexible scheduling) as reasons for quitting their roles.

Regardless of when the pandemic subsides, many individuals have permanently altered their job expectations and workplace priorities, placing new demands on employers. As such, many economists anticipate these labor shortages to continue throughout 2022 and beyond—impacting businesses for the foreseeable future and forcing them to adjust their current hiring and retention tactics.

How Labor Shortages Affect Liability Risks

Widespread labor shortages can create several liability exposures for businesses of all sectors. In particular, these shortages often force employers to schedule fewer staff members for each shift (leaving them overworked) and resort to hiring lesser-skilled employees to fill job openings.

This culmination of exhausted and underqualified workers can increase the risk of employees cutting safety corners or making careless errors during their daily tasks, potentially resulting in workplace accidents. These accidents could harm or injure both employees and customers, creating major liability issues. Overworked and inexperienced employees may also be more likely to miss important project deadlines and cause service delays, contributing to disgruntled customers and associated liability problems. Additionally, staff shortages can make it more difficult for employers to maintain adequate workplace security, making them more vulnerable to property and inventory losses—which could result in liability troubles.

Here's a closer look at how labor shortages have created elevated liability risks within specific industries:

- **Construction**—According to the U.S. Chamber of Commerce's Commercial Construction Index, 55% of contractors have reported a high level of difficulty in securing qualified workers. Although President Joe Biden's administration seeks to increase commercial construction project opportunities through a $1 trillion infrastructure plan, uncertainty about the specific types of projects available has made it challenging for contractors to hire and retain workers. With nearly half of construction workers over the age of 45, the sector could face continued staff shortages amid growing retirement rates. Due to the nature of the construction industry, labor shortages can pose substantial liability risks by way of elevated (and more severe) job site accidents, project delays and decreased workmanship.
- **Manufacturing**—The BLS reported that the manufacturing sector is currently facing over 800,000 job openings, highlighting a major labor crisis. While the Biden administration has allocated federal funding through several executive orders to help foster a new generation of manufacturing workers, staff shortages remain a pressing concern. To combat these shortages, some manufacturers have leveraged artificial intelligence instead of employees to complete daily tasks. On the other hand, some manufacturers have reduced their job requirements relating to criminal history, legal marijuana usage and previous work experience to expand their candidate reach. Yet, this change in criteria can lead to an underqualified workforce, increasing instances of job site accidents and

subsequent liability issues. After all, the latest industry research shows that manufacturing employees with one year or less of job experience contribute to over one-third (35%) of worksite accidents and related insurance claims. Apart from exposures from underqualified employees, a recent survey found that 60% of manufacturing workers have reported added stress and muscular pain or discomfort due to being overworked since the pandemic began—creating additional accident risks and related liability concerns.

- **Trucking**—According to the American Trucking Associations (ATA), there is currently a driver shortage of more than 80,000 positions—largely fueled by the aging workforce, a declining interest in the profession and certain industry barriers. Making matters worse, the ATA estimates 160,000 commercial driver positions could be unfilled by 2030. The driver shortage is so profound that the Biden administration's infrastructure plan includes funding for an apprenticeship pilot program intended to encourage commercial driver's license holders under the age of 21 to operate in interstate commerce. Amid this shortage, many trucking employers have had to extend their existing employees' driving schedules and lower their driver applicant standards to fill open positions. Nevertheless, such factors can make employees more likely to be involved in serious accidents on the road. These accidents can create various liability issues, including driver injuries and fatalities, damaged or lost inventory, and delivery delays.

Steps Businesses Can Take

To combat labor shortages, employers should consider the following guidance:

- **Increase pay.** Providing more competitive wages can help employers retain existing workers and attract new employees within their respective industries. Offering sign-on bonuses may also improve employers' hiring capabilities.
- **Offer additional benefits.** A range of employment benefits can assist employers in maintaining an ample workforce. These benefits may include remote work capabilities, flexible scheduling, additional paid time off and well-being stipends.
- **Reward existing employees.** Employers can also use rewards and incentives to help retain current workers. These incentives may include monthly bonuses for top performers or extra discounts on business merchandise (if applicable).
- **Limit business hours.** To ensure existing employees feel properly supported in their roles, employers may need to adjust their business hours. Doing so can prevent employees from being overworked amid understaffed shifts.

To minimize potential liability risks caused by labor shortages, businesses should consider these measures:

- **Ensure effective onboarding processes.** Especially if labor shortages require employers to hire inexperienced workers, it's critical to have proper onboarding protocols in place. These protocols can equip new employees with the knowledge and resources they need to succeed in their roles.
- **Provide routine training.** Employers should have all of workers—regardless of experience—engage in regular, job-specific safety training. This training will help promote a safety culture and minimize the risk of workplace accidents and injuries (as well as related liability concerns).
- **Schedule regular check-ins.** Finally, it's vital for employers to check in with their workers on a frequent basis. Keeping such consistent communication will motivate employees to share any safety concerns or other work-related issues that arise, allowing employers to remedy these problems before they cause liability incidents.

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