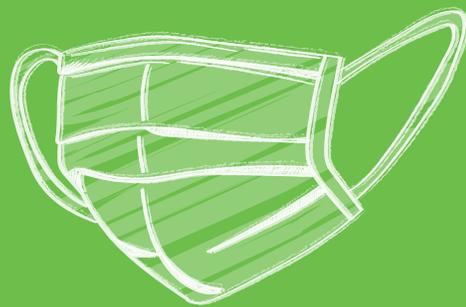
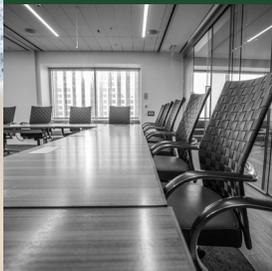
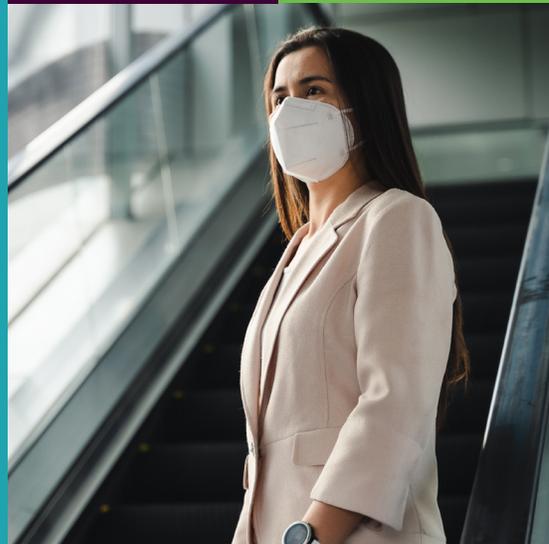


Special Report:

Littler Employer Pulse Survey Report

November 2020



Littler[®]

Fueled by ingenuity.
Inspired by you.

This report summarizes and analyzes data gathered from nearly 1,100 in-house lawyers, HR professionals and C-suite executives. The survey gauged employers' key concerns and strategies at this phase of the COVID-19 pandemic, as well as their views on the 2020 election's impact on workplace policy and their outlook for 2021.

Disclaimer: Survey questions and their resulting findings do not represent any specific political affiliation or preferences of Littler, nor do they constitute any legal, economic or political advice.

Executive Summary

Back in May, our [Return to Work Survey](#) saw the majority of nonessential businesses (78 percent) intending to reopen their physical worksites within three months. But as COVID-19 cases continued to rise over the summer, many companies that planned to reopen after Labor Day started extending their timelines. Now, it appears that many companies [across](#) corporate America – from tech giants to car manufacturers to investment banks – are targeting next summer at the earliest to return to in-person work.

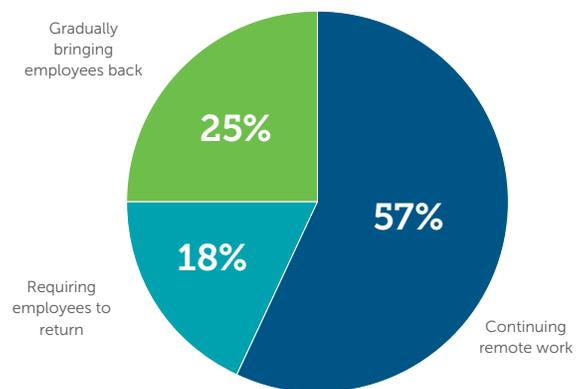
As the reality of the extended remote work environment has set in, our **Employer Pulse Survey** of nearly 1,100 employers finds companies refocusing their workforce management priorities and placing more importance on employee well-being and company culture. The survey also offers a view into what employment law-related changes companies expect from the incoming Biden administration, including increased enforcement of COVID-19 safety rules, policies that would support working parents and measures to address income inequality.

Among respondents who haven't already had most employees on-site during the pandemic, the majority (57 percent) say they are continuing remote work at least through the end of the year and 25 percent are gradually bringing employees back on a voluntary basis. Only 18 percent are reopening and requiring more employees to return.

By far the number one reason for this cautious approach, selected by 83 percent of employers, is to accommodate employees who prefer remote work due to safety concerns or personal circumstances, such as school closings or caring for elderly family members.

And this is only one sign that employers are increasingly concerned with employee well-being – and the challenges therein.

Reopening status of nonessential businesses



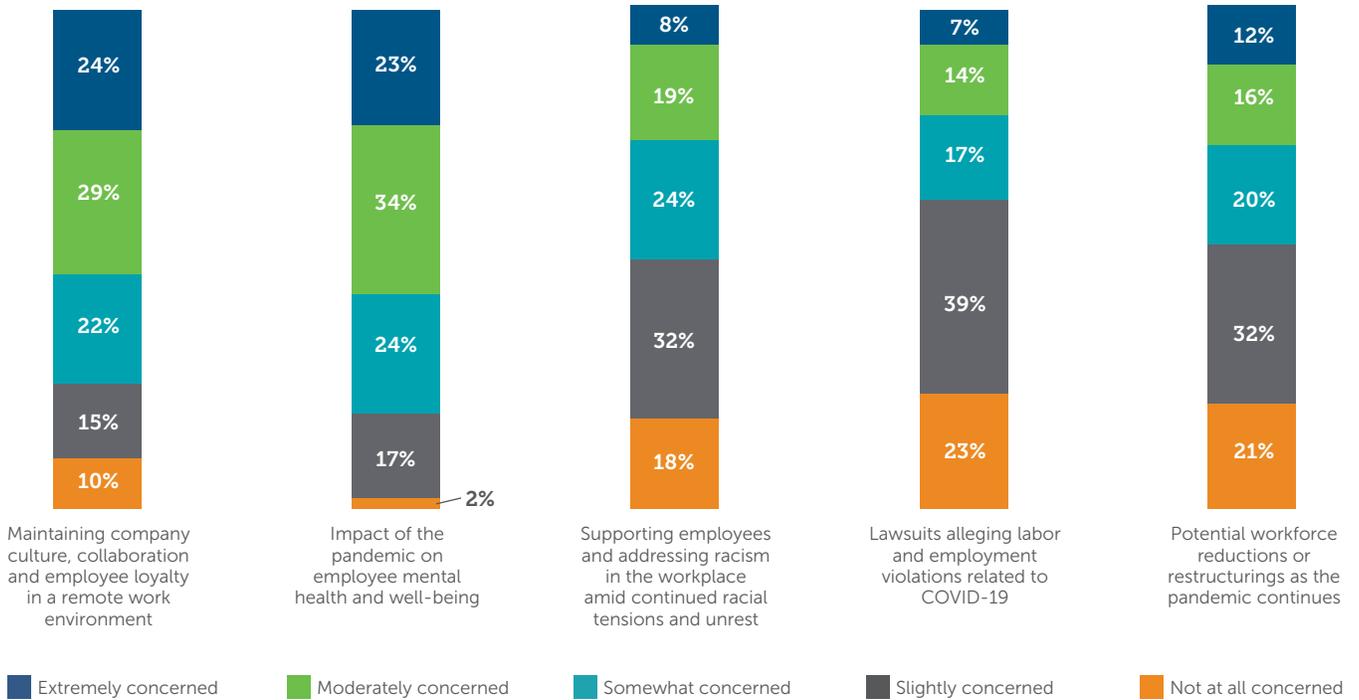
For instance, 81 percent are at least somewhat concerned about the pandemic's impact on employee well-being and 75 percent say the same about maintaining company culture, collaboration and employee loyalty in a remote work environment. In addition, 56 percent of respondents say their organizations have struggled to navigate the various laws that apply to time off, scheduling and accommodation requests from employees with children whose education and care are affected by COVID-19.

In what follows, we provide insights into how employers are being impacted by the ongoing pandemic, the incoming Biden administration and other workforce issues, including supporting employees amid continued racial tensions and unrest, implementing workforce management technology and handling conflicts arising from mask mandates.

In the charts and analysis that follows, responses to some questions do not add up to 100 percent due to rounding, and some exceed 100 percent because respondents were invited to select more than one answer. For the full survey [methodology and a breakdown of respondent demographics](#), see page 15.

Workplace Outlook: A Focus on Employee Well-Being

Please rate the following issues by the level of concern for your organization over the next six months from a workforce management perspective.



Which of the following actions, if any, has your organization taken to address employee mental health and well-being during the COVID-19 pandemic? (check all that apply)



With employers largely delaying a full return to physical workplaces until 2021, their focus for the next six months appears to have turned toward employee well-being and company culture in this prolonged remote work environment. This is not surprising given the challenges employees face, which can run the gamut from childcare availability to feelings of isolation to Zoom fatigue.

Eighty-one percent of respondents are at least somewhat concerned about the pandemic’s impact on employee mental health and well-being, and just 2 percent are not concerned – an indication of the growing importance of employee mental health in corporate America. At the same time, 75 percent are at least somewhat concerned about maintaining company culture, collaboration and employee loyalty under remote work conditions. While it is more widely accepted now that employees can be just as productive working remotely, it can be a greater challenge to foster creative thinking and connection to the company among dispersed teams – without which employee morale will suffer and talent may be more easily lured away by competitors.

Employers are taking a wide range of actions to address their employees’ mental health and well-being during the pandemic, with only 5 percent taking no action at all. Most respondents (76 percent) are communicating frequently with employees about the organization’s response to the pandemic and soliciting their feedback and concerns. Beyond that, employers are offering more flexible work schedules (73 percent), providing mental health services and/or Employee Assistance Programs (68 percent) and offering virtual events to encourage connection and collaboration (55 percent). On the other hand, only 23 percent have provided additional training to managers – an action that could put them in a better position to respond to employees in need of support.

Renewed calls for racial justice and equality have also impacted employers' six-month workplace outlook – though perhaps not as much as one might think. While 51 percent are at least somewhat concerned about supporting employees and addressing racism in the workplace, only 8 percent are extremely concerned, and 18 percent are not concerned at all.

Companies with over 10,000 employees, however, expressed significantly more concern in this respect – 13 percent are extremely concerned, 31 percent are moderately concerned and only 7 percent are not concerned at all. This higher level of concern among large employers could be driven by a number of factors, including a greater degree of reputational risk, a more diverse employee makeup and more difficulty in connecting with individual employees. Regardless of the reason, the self-awareness in this case is ultimately a good thing, as large employers have the resources to establish positive models for diversity, equity and inclusion for others to follow.

And while issues related to employee well-being and company culture may be the stronger focus in the near-term, our findings suggest that concerns about workforce restructurings and employment-related lawsuits may still present real longer-term obstacles. Less than a quarter of respondents are not concerned at all about lawsuits alleging labor and employment violations related to COVID-19 (23 percent) and potential workforce restructurings or reductions as the pandemic continues (21 percent).



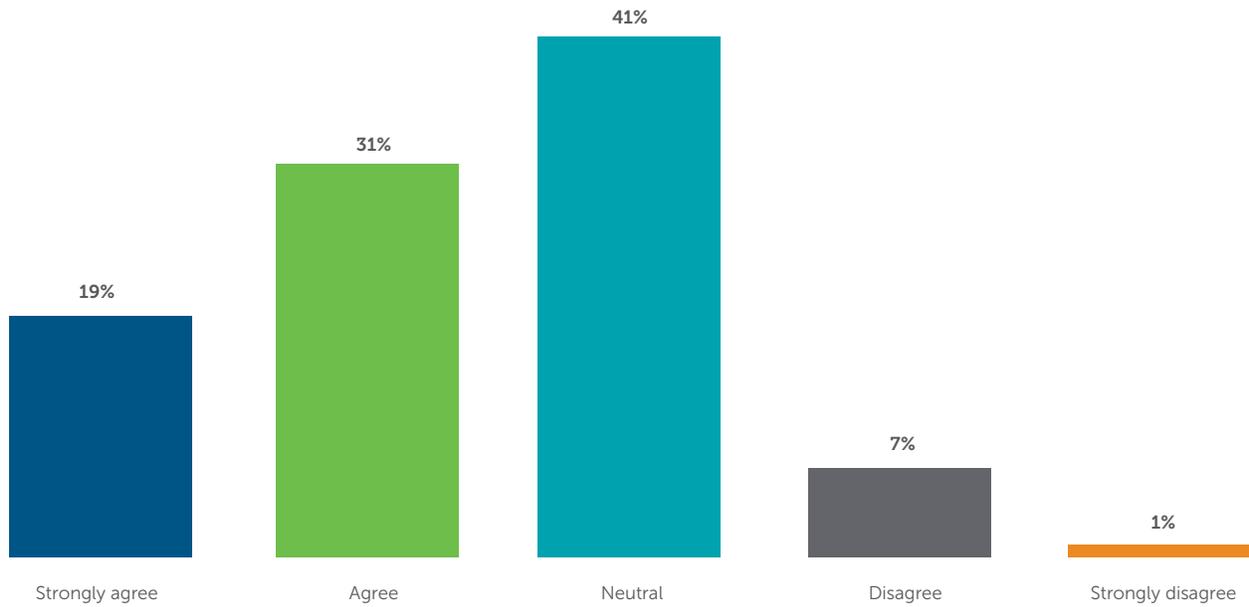
Now that most employers know they will be operating in a remote work environment for a while, their most immediate concerns involve the impact this may have on employee well-being and company culture. Addressing these issues – via technology tools, more flexible policies or otherwise – is a real opportunity for employers to better engage their employees and prioritize their health. At the same time, they must be prepared to navigate new compliance risks, be they around policies that may give rise to discrimination claims, wage and hour issues or any number of other areas.

[Alka Ramchandani-Raj](#), a leader of Littler's COVID-19 Task Force



2020 Election

Please indicate the extent to which you agree with the following statement: If there is a change in presidential administration after the 2020 election, there will be an uptick in enforcement actions by the U.S. Occupational Safety and Health Administration (OSHA) and its state counterparts regarding compliance with COVID-19 safety rules.



During his presidential campaign, former Vice President Joe Biden was critical of the steps OSHA was taking to protect workers during the pandemic, [saying](#) that it was not doing enough to enforce workplace safety guidelines. It follows that, in responding to our survey in the weeks leading up to Election Day, 50 percent of employers agreed there would be an uptick in enforcement from OSHA and its state counterparts under a Biden administration. Only 8 percent disagreed that this would be the case.

For larger companies (those with over 10,000 employees), the level of agreement rose even higher, to 58 percent. In-house counsel also expressed a higher degree of agreement, with 57 percent expecting greater OSHA enforcement, compared to 47 percent of HR professionals.

The large percentage of respondents that fell in the “neutral” camp (41 percent) may reflect that how quickly employers see a change in enforcement strategy will depend on the speed at which new leaders are confirmed to agency positions. A new secretary of labor will need to be sworn in, followed by an administrator for OSHA. If Republicans maintain their majority in the Senate – which will not be decided until January – these confirmations will come more slowly for the Biden administration.

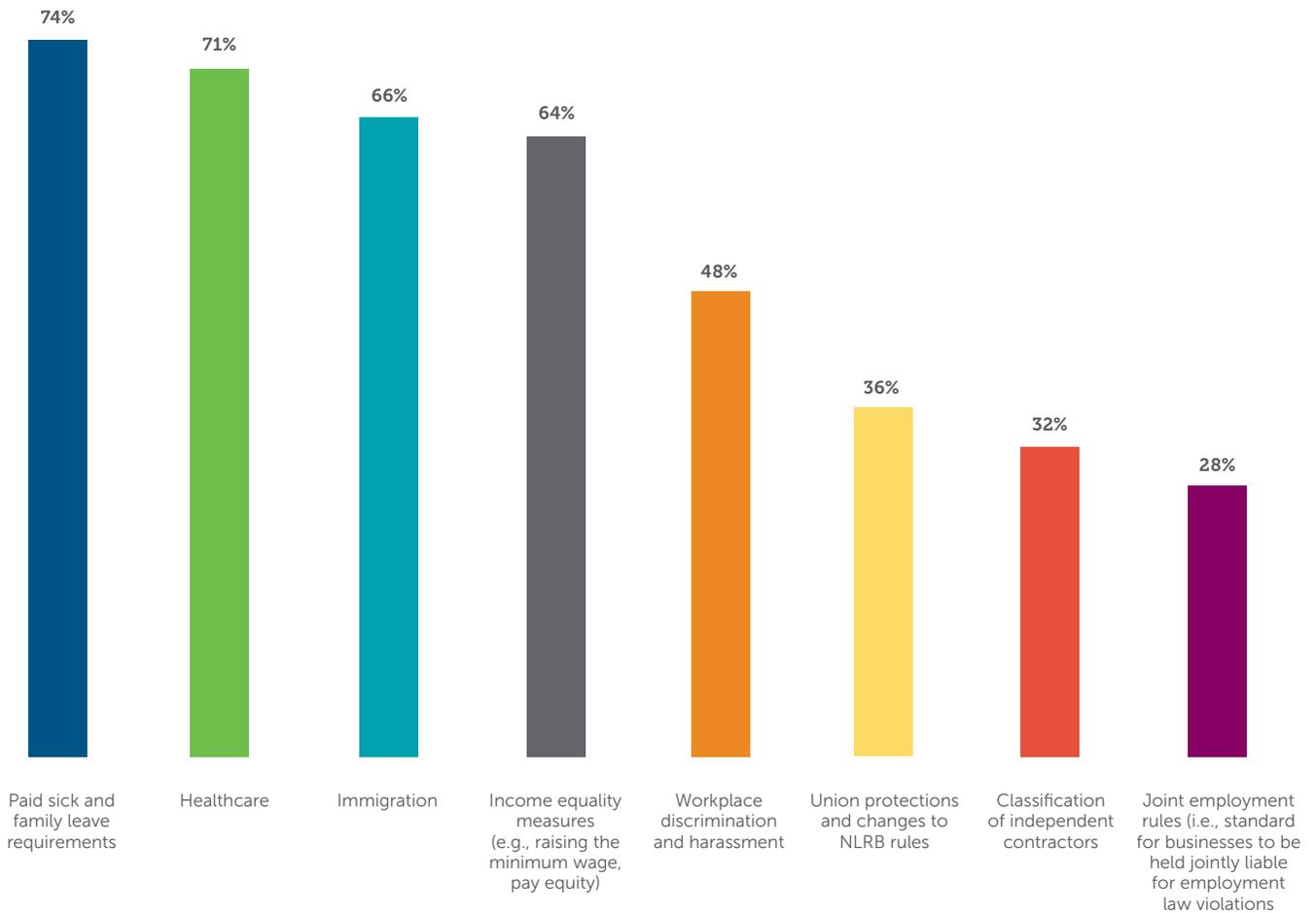


There is virtually no doubt that there will be a push in the beginning of a Biden administration for OSHA to more aggressively enforce existing standards and the General Duty Clause as they relate to COVID-19. OSHA will also likely look closely at promulgating a new mandatory standard specific to COVID-19, which would add other tools to its toolbox to address the virus.

Brad Hammock, Co-Chair of Littler’s Workplace Safety & Health Practice Group and a leader of the firm’s COVID-19 Task Force



Outside of the COVID-19 response, in which of the following areas do you expect there will be employment law-related changes that will impact your business in 2021 if there is a change in presidential administration? (check all that apply)



The survey results illustrate expectations of a fairly high degree of change in workplace policy under a Biden administration. For instance, most employers expect Biden to prioritize changes to paid sick and family leave requirements (74 percent) and measures to address income inequality (64 percent), which aligns with Biden’s plans to advance policies that would [support](#) working parents and [raise](#) the federal minimum wage to \$15 an hour.

Amid continued political and legal wrangling over the Affordable Care Act, healthcare policy also emerged as a key area, with 71 percent of employers expecting changes that impact their workplace under a new administration. Immigration (66 percent) – another area that reflects a stark contrast between President Trump and President-elect Biden – did as well.

While understandably lower on the list – as the issues may not be as applicable to some respondents – roughly one-third expect changes that will impact their businesses in the areas of union protections/NLRB rule changes (36 percent), independent contractor classification (32 percent) and joint employment rules (28 percent). The status of independent contractors and those in the gig economy, for instance, has continued to make headlines, and courts and agencies nationwide have issued various (and conflicting) decisions. A Biden administration will likely bring further regulatory action in this space.

For an in-depth assessment of what the election results will mean for the world of work, read [Littler WPI's Election Report](#).



A Biden presidency will undoubtedly bring regulatory changes that impact the workplace, be it around OSHA enforcement, labor reform, paid leave or other critical areas. How those initiatives move forward will depend on a number of factors that remain to be seen, but that doesn't mean employers should wait to act. They would do well to start preparing for potential regulatory changes and to ensure the voice of the employment community is heard as the new administration confronts the numerous challenges that lie ahead.

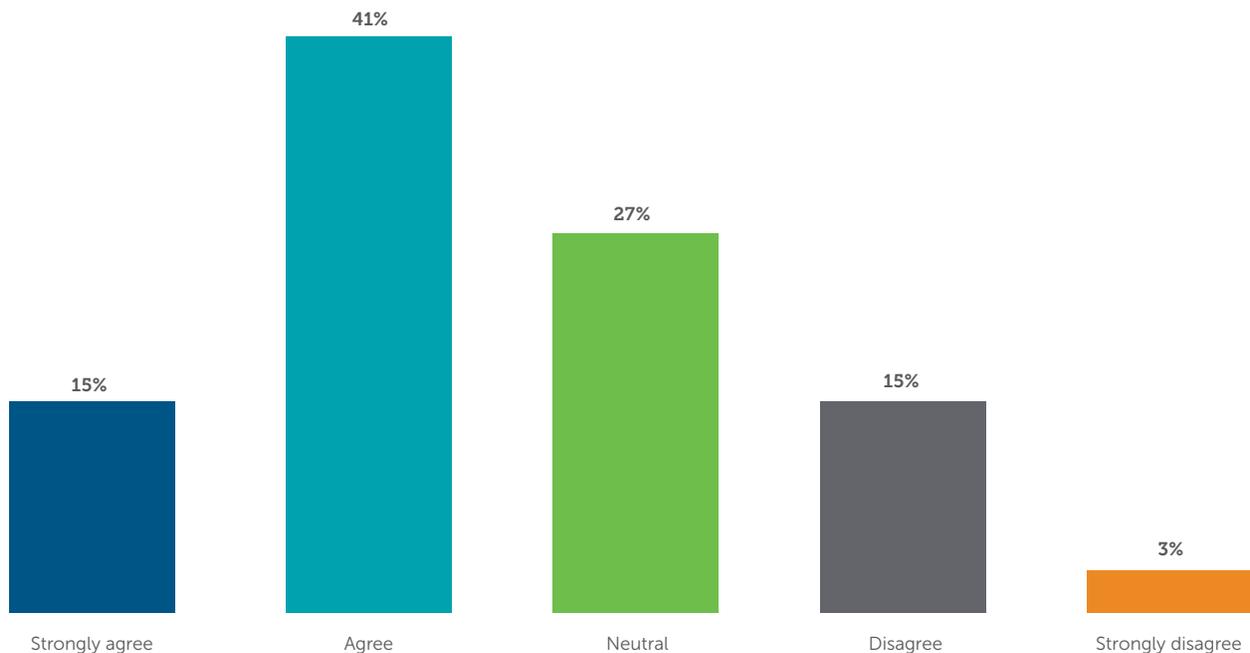
[Michael Lotito](#), Co-Chair of Littler's [Workplace Policy Institute](#)



Workforce Management

Flexible Policies

Please indicate the extent to which you agree with the following statement: Navigating the various laws that apply to time off, scheduling and accommodation requests from employees with children whose education and care are affected by COVID-19 has been difficult for my organization.



The universe of laws related to time off, scheduling and accommodation requests – particularly from employees with children whose education and care is affected by COVID-19 – is vast and expanding. Some laws, like the federal Families First Coronavirus Response Act (FFCRA), came about as a result of the pandemic. Meanwhile, preexisting leave laws, such as paid sick leave and unpaid family leave, were amended or interpreted to add protections for absences related to COVID-19.

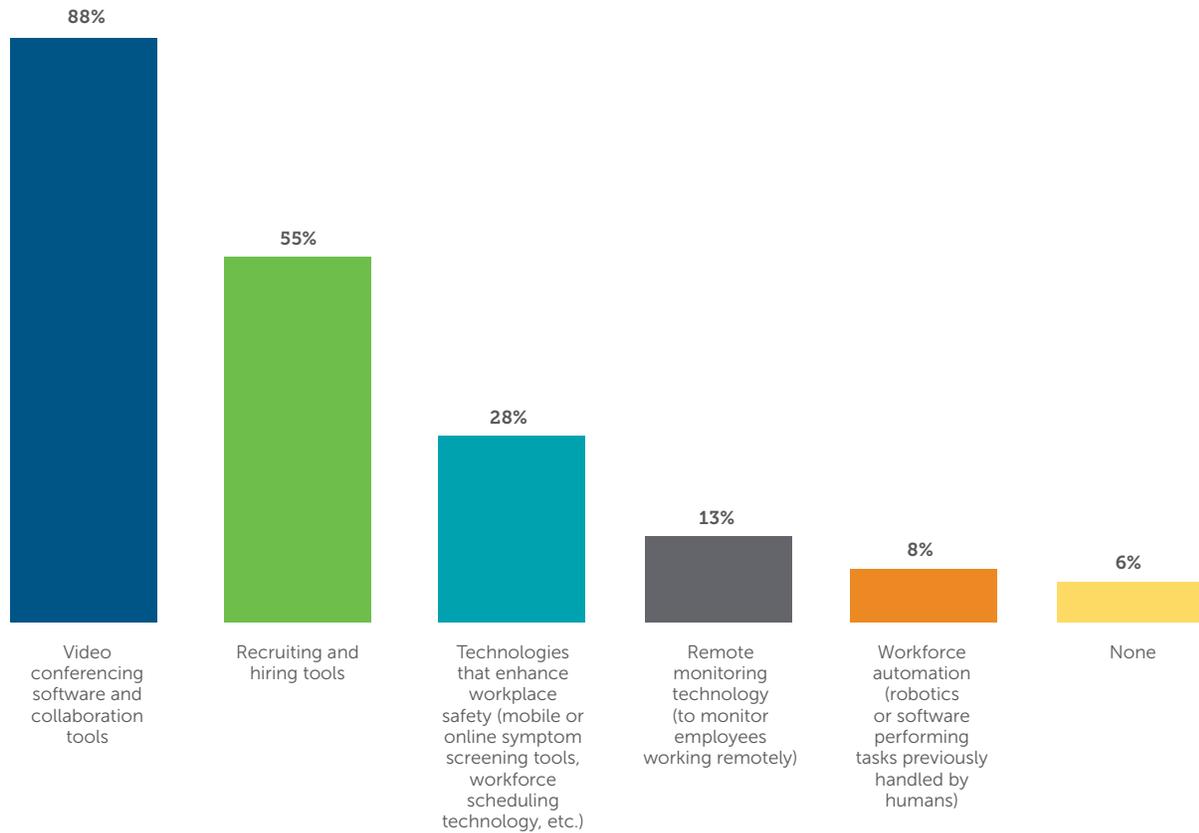
On top of all that, scheduling laws might apply, anti-discrimination protections could be triggered and laws that are event-specific, such as protections during a declared emergency, can be invoked during the pandemic. And, as discussed earlier in this report, some of these laws might change even more under a Biden administration, which is expected to prioritize changes to paid sick and family leave requirements.

It follows that 56 percent of employers agree that navigating these laws has been difficult. The largest companies surveyed (those with over 10,000 employees) also report more concern: 26 percent strongly agree it has been difficult for their organization, compared to 15 percent of all respondents. This is not surprising given that these employers are managing more employees across multiple locations, each with their own – and ever-changing – learning environments and local laws.

For an in-depth overview of these laws and how they may apply, read Littler’s [article](#) on this topic.

Technology

In which of the following areas is your organization using, or considering using, technology or digital tools to help manage your workforce during the pandemic? (check all that apply)



COVID-19 has accelerated technology's already prominent role in how companies operate and further transformed how we work in myriad ways that are likely to persist post-pandemic.

It should come as no surprise that, when asked which technology or digital tools they use to help manage their workforce during the pandemic, 88 percent of employers cited video conferencing software and collaboration tools.

In addition, more than half (55 percent) are now using technology-driven recruiting and hiring tools, such as artificial intelligence (AI) or analytical tools that can help screen resumes and/or open new talent pools for employers. That number jumped to 70 percent for the largest companies surveyed (those with over 10,000 employees), which may in part reflect the pressure these companies are under to review a flood of new job applications that often come with open positions in the current economic climate.

Fewer employers report using technologies like mobile symptom screening that enhance workplace safety (28 percent) – which makes sense given the continued prevalence of remote work – or workforce automation (8 percent), although this percentage can be expected to rise as more companies recognize the many benefits of AI, robotics and automation tools, particularly in a post-pandemic workplace.



COVID-19 has quickly ushered us into the workplace of the future, where technology permeates everything from employee collaboration to smart shift scheduling to contactless office spaces and more. The high level of interest in AI-powered tools is not surprising, as they offer great promise for a more efficient and effective recruiting and hiring process. However, companies must be mindful of the compliance risks – particularly that algorithms could inadvertently discriminate against a protected group – and ensure the integrity of the data, as these tools are only as good as the data used to train and feed them.

Aaron Crews, Littler's Chief Data Analytics Officer



Mask Mandates

Which of the following steps is your organization taking to manage or avoid situations where customers or clients refuse to follow public health requirements, including mask mandates and social distancing? (check all that apply)

This question was only asked to companies that have customers or clients at their worksites.



Most U.S. states and hundreds of local governments have enacted orders [requiring](#) face masks (to some degree), and the burden of enforcing these orders often falls to businesses and their employees.

This has become increasingly problematic as news reports and viral social media posts continue to reveal aggressive (and sometimes violent) resistance to mask mandates. Employees nationwide have been threatened, assaulted and even killed in an attempt to enforce public health directives. The Centers for Disease Control and Prevention has now [issued](#) non-mandatory guidelines on steps retail and services businesses can take when faced with violence related to COVID-19 prevention policies and practices, including the refusal to wear masks. Aside from the obvious – and pressing – safety concerns these conflicts pose, the federal Occupational Health and Safety Act dictates that employers have a general duty to provide a safe workplace for employees. Thus, if businesses botch their responses to violent or threatening behavior, they may open themselves up to liability.

To that end, it's promising that 65 percent of employers have placed signage explaining policies regarding mask wearing as a first line of communication before customers enter the building. But the survey findings suggest there are additional steps employers can take to provide employees with instructions on how to react when faced with situations that are likely to escalate into clashes. Only 28 percent have trained employees around potentially violent situations and 23 percent have developed a plan with steps for preventing and reporting violent occurrences.



While there's no one-size-fits-all solution to addressing workplace violence, employers can reduce risk by having a thorough prevention plan and protocols in place, as well as periodic third-party training for employees that may encounter customer violence. Equipping employees with the proper resources is also important, such as access to phones to call law enforcement or alarms to use in an emergency.

[Terri Solomon](#), Co-Chair of Littler's Workplace Violence Prevention Practice Group



Methodology and Demographics

From October 13-23, 2020, 1,070 professionals from a variety of industries completed the **Littler Employer Pulse Survey** via an online survey tool.

Respondents included:

- Human resources professionals (57 percent)
- General counsel/in-house attorneys (28 percent)
- C-suite executives or other professionals (15 percent)

Companies represented were of a variety of sizes:

- More than 10,000 employees (17 percent)
- 5,001 to 10,000 employees (7 percent)
- 1,001 to 5,000 employees (20 percent)
- 501 to 1,000 employees (11 percent)
- 101 to 500 employees (29 percent)
- 1 to 100 employees (16 percent)