Our benchmarking survey of in-house counsel and senior HR professionals is now in its third year—and we could not have predicted how much the world would change over the past few years for employers.

This year, as employers face increasing economic uncertainty, many challenges still loom. While some companies are implementing reductions in force (RIFs) and layoffs, others are still dealing with hiring and retention issues. The patchwork of state and local employment laws continues to expand. And, the impact of artificial intelligence (AI) and technology in the workplace presents both opportunities and risks.

I hope you will enjoy reviewing our third annual benchmarking report and that it provides some useful insights into today’s workplace. Thank you to the nearly 1,100 in-house counsel and senior HR professionals who participated in our survey.

C. Matthew Keen
Managing Shareholder, Ogletree Deakins
Methodology

Survey conducted from March 21, 2023 – April 4, 2023

Nearly 1,100 responses from in-house counsel and senior HR professionals

Top 5 industries represented:
• Manufacturing
• Technology
• Healthcare
• Financial services
• Retail

Representing companies of all sizes

*The percentages reported reflect answers by individual respondents rather than individual companies.
### Top Labor and Employment Challenges

Respondents say their companies’ **most challenging issues, ranked from 1 (most challenging) to 7 (least challenging)**

- **#1**: Hiring and Retention
- **#2**: Multistate and Multijurisdictional Compliance
- **#3**: Leave of Absence and Accommodations
- **#4**: Pay Equity or Pay Transparency
- **#5**: Wage and Hour Compliance
- **#6**: Layoffs/Reductions in Force
- **#7**: Union Organizing/Labor Issues

64% of respondents consider hiring and retention to be their most challenging issue currently.

### Respondents say their companies’ **most challenging multijurisdictional compliance issues, ranked from 1 (most challenging) to 5 (least challenging)**

- **#1**: Wage and Hour Laws
- **#2**: Leave of Absence Laws
- **#3**: Pay Transparency Laws
- **#4**: Background Check Laws
- **#5**: Marijuana Laws

36.5% of respondents consider wage and hour laws to be their most challenging multijurisdictional compliance issue currently.
Changes respondents say their companies have made to help with **recruiting and/or retention** challenges

- **71.7%** increased their base pay.
- **44.3%** instituted flexible work arrangements.
- **51.9%** utilized hiring/signing bonuses.
- **41.8%** strengthened focus on wellness and/or diversity, equity, and inclusion.

**50.7%** of respondents identified a lack of candidates to be the biggest challenge in recruiting and hiring employees.

- **34.8%** Enhanced benefits
- **31.4%** Eliminated COVID-19 vaccination requirements
- **24.1%** Relaxed educational or experience requirements
- **21.8%** Increased incentive pay tied to company or employee performance

Hiring Challenges and Solutions
13.6% of respondents say their companies have eliminated pre-employment or random drug testing.

Respondents say their companies do the following regarding pre-employment drug testing:

- **35.9%** do conduct pre-employment testing for marijuana for non-safety sensitive positions
- **61.5%** do not conduct pre-employment testing for marijuana for non-safety sensitive positions
- **2.6%** don't know
## Where is the workforce working?

### On average, how many days per week is your workforce working remotely?

<table>
<thead>
<tr>
<th>Days per Week</th>
<th>Percentage</th>
<th>Change from 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 Days per Week</td>
<td>26.5%</td>
<td>4.2% increase</td>
</tr>
<tr>
<td>1 Day per Week</td>
<td>10.5%</td>
<td>3.7% increase</td>
</tr>
<tr>
<td>2 Days per Week</td>
<td>28.3%</td>
<td>4.7% decrease</td>
</tr>
<tr>
<td>3 Days per Week</td>
<td>18.2%</td>
<td>1.3% decrease</td>
</tr>
<tr>
<td>4 Days per Week</td>
<td>6.7%</td>
<td></td>
</tr>
<tr>
<td>5 Days per Week</td>
<td>9.8%</td>
<td></td>
</tr>
</tbody>
</table>
Has your company recently implemented or are you planning to implement any layoffs or reductions in force in 2023?

- **42.8%** No
- **24.8%** Yes
- **17.9%** Probably not
- **10%** Likely but not sure yet
- **4.5%** I don’t know
Is the use of contingent workers (e.g., independent contractors and temporary/contract workers) a significant element of your company’s current business model?

- Yes: 41.7%
- No: 57.3%
- Don’t know: 1%
Respondents say the following regarding their companies’ use of artificial intelligence and technology:

- **61%** have no policy regarding the use of ChatGPT at work.
- **15.8%** intend to wait and watch developments before issuing any direction on ChatGPT.
- **20.7%** use elements of artificial intelligence for recruiting and hiring purposes.
- **21.3%** use employees’ biometric information (e.g., fingerprints, retinal scans, facial mapping) in some fashion.

This information is from the Ogletree Deakins Benchmarking Survey 2023.
Respondents say the following regarding their companies’ use of arbitration agreements:

- **38.1%** use arbitration agreements.
- **26.6%** allow employees to opt out.
of respondents have seen an increase in union activity in their organization in the past year.

In light of the NLRB’s recent decision prohibiting nondisparagement and confidentiality provisions in severance agreements, has your company decided to modify your severance, settlement, and employment agreements?

- **35.3%** have not modified their agreements and will wait and see how the NLRB’s decision plays out.

- **32.3%** are still discussing which approach is best for their organization.

- **26.5%** have modified their agreements, but have decided to draft “narrowly tailored” confidentiality and nondisparagement language in an attempt to comply with the decision.

- **5.9%** have modified their agreements and decided to completely remove confidentiality and nondisparagement language.
Does your organization’s health benefit plan cover reproductive health services?

57.3% Yes

23.1% No

17.3% I don’t know.

2.3% Not currently, but we are planning to cover this in the future.
Independent, Unbiased Research Based Solely on Feedback From In-House Counsel and Senior HR Professionals