

HR Alabama

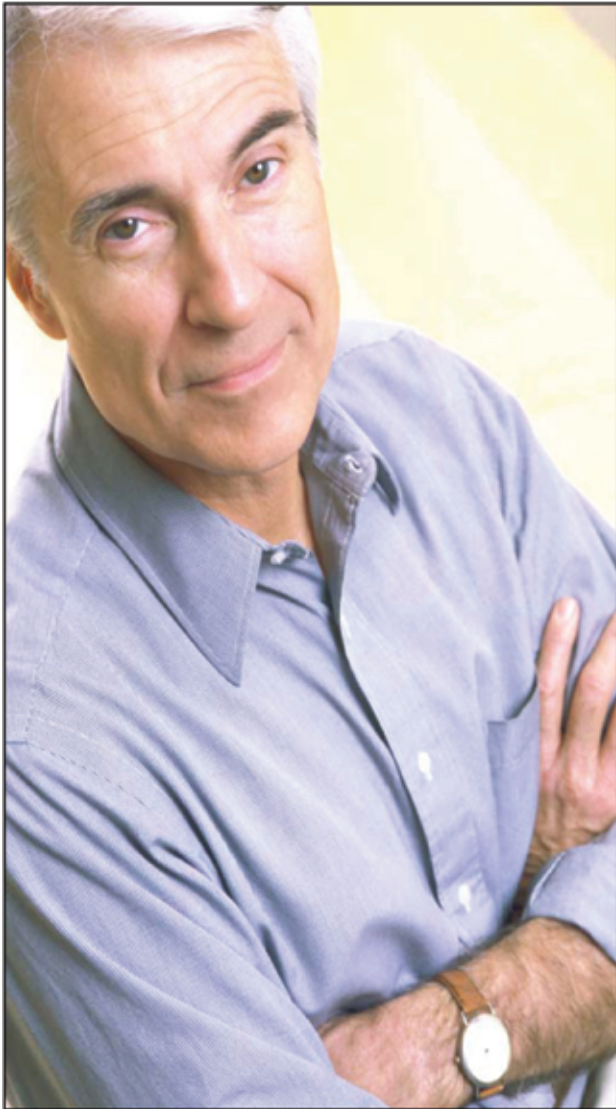
Volume 2, May, 2012

AFFILIATE OF



SOCIETY FOR HUMAN
RESOURCE MANAGEMENT





Employment Solutions.

Tanner & Guin attorneys understand business issues employers and owners face.

- Employee Handbooks
- Supervisor / Management Training
- Responding to EEOC Charges
- Defending OSHA Citations
- Defense of Employee Lawsuits

Employment Training.

The Employment Law Group of Tanner & Guin routinely conducts training programs on site for company management, employees and directors of divisions.

- Workplace Harassment Training (Separate sessions for management and other employees)
- Conducting Workplace Harassment Investigations – Intensive training for HR Department
- Family and Medical Leave Act (“FMLA”) - Intensive training for HR Department
- Management Training (HR Department) – Best Hiring Practices and Complying with Federal and State Employment Laws
- Management Training – Discipline and Termination



Tanner & Guin, LLC
COUNSELORS AT LAW

(205) 633-0200
www.tannerguin.com

Bert Guy ♦ Tom Scroggins ♦ Brooke Nixon

Solutions for Your Growing Business.™

No representation is made that the quality of legal services performed is greater than the quality of legal services performed by other lawyers.



*Which direction are
you going?*

Pointing your employee benefits program in the same direction as your company's future can be a challenging task for an HR Manager.

Alliance Insurance Group is a consulting firm specializing solely on employee benefits. Founded with the idea that small and mid-size companies need innovative solutions driven by sound strategy and client service, we show our clients how to synchronize their HR goals with corporate goals.

**Proudly serving the
Southeast!**

**www.allianceinsgroup.com
866.396.3967**



Alliance Insurance Group
Employee Benefit Consultants

About HR Alabama

Volume 2, May, 2012

HR Alabama magazine is published annually by the SHRM Alabama State Council, an affiliate of the Society for Human Resource Management. The publication is a volunteer effort that endeavors to provide HR professionals in Alabama with useful, thought-provoking information and ideas. HR Alabama is distributed free of charge to SHRM-Affiliate chapter members and non-chapter affiliated SHRM members throughout Alabama.

HR Alabama and the SHRM Alabama State Council would like to thank the many fine professionals that contributed their time to contribute articles, the advertisers without whom HR Alabama would not be possible, and our partner the Anniston Star, a unit of Consolidated Publishing Company. Special thanks to Anniston Star staffers Demetrius Hardy, who handled advertising and Patrick Stokesberry, who did the graphics and layout.

All positions and opinions expressed in the articles are those of the authors, and do not represent the views of the SHRM Alabama State Council or SHRM. Please feel free to send your feedback or comments (positive, or not-so-positive!) to any of the contributors, or to the Editor.

If you are interested in contributing to the 2013 edition of HR Alabama, contact John Faure. For advertising information, please contact Paula Watkins.

HR Alabama is available for download in PDF format at
<http://www.shrmalabama.org>.

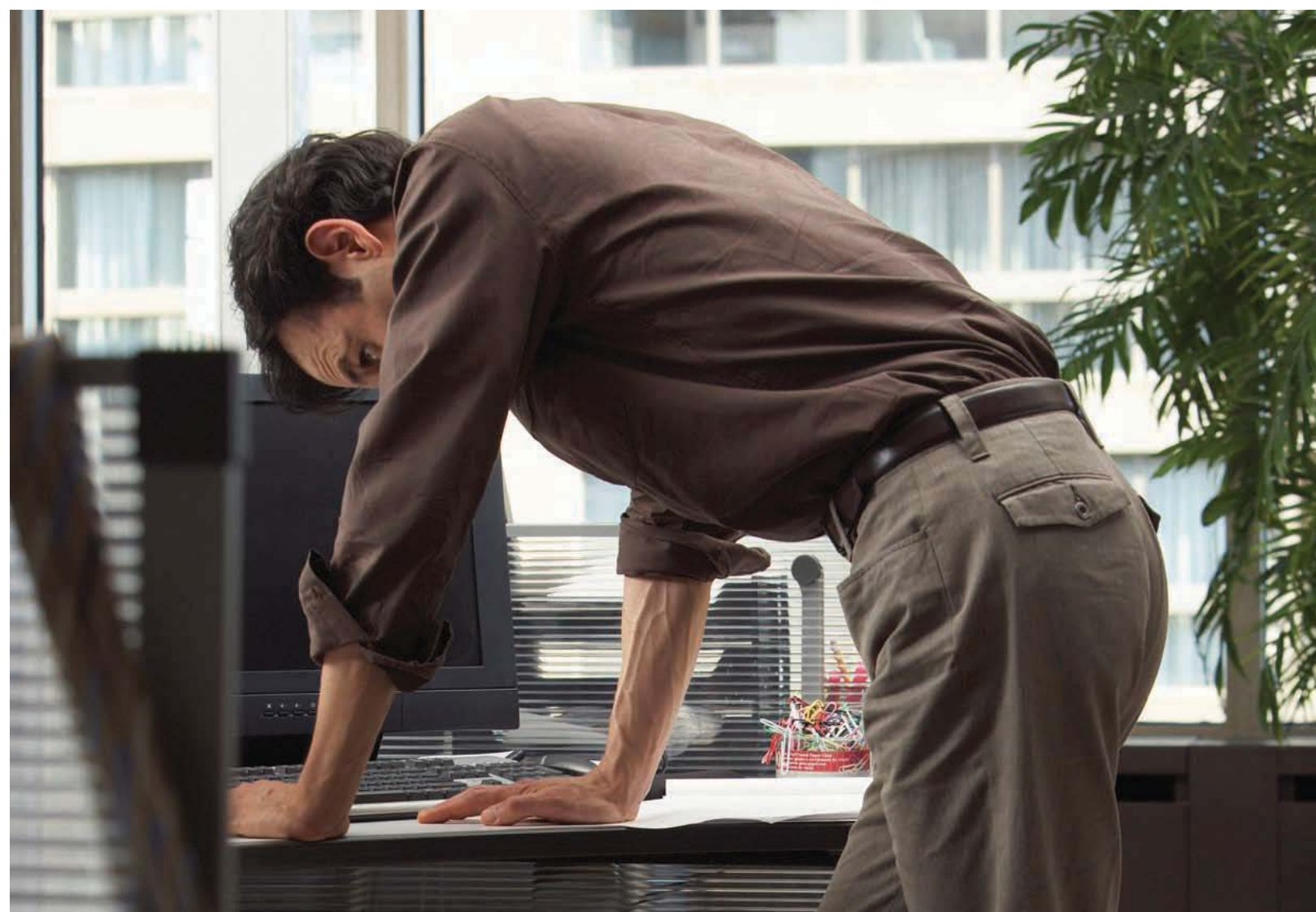
We hope you enjoy the magazine!

Respectfully,

Paula Watkins, SPHR
Advertising Sales and Circulation
pwatkins@lyonshr.com

John Faure, SPHR
Editor
Faure@Bellsouth.net





Employment law can change your business.

IN GOOD WAYS OR BAD.

KEEPING UP WITH THE continual changes in labor and employment law is challenging. That's why Alabama-based businesses and those doing business in Alabama depend on Jones Walker. Our attorneys provide essential guidance and help to solve the toughest issues, including wage and hour laws, discrimination litigation, labor organizing, compliance programs and training and other mandates. Don't wait until employment law changes affect your business beyond human resources. Contact Jones Walker today.



OUR EMPLOYMENT LAW ATTORNEYS INCLUDE: Bradley Byrne, Kathryn Drey, Ed Miller, Jim Rebarchak, Victoria Franklin Sisson & Kary Wolfe

CELEBRATE

1937 **75** 2012

Honoring the past. Embracing the future.

Kary Wolfe
1819 5th Ave. N., Suite 1100
Birmingham, AL 35203
205.244.5200 | kwolfe@joneswalker.com

Bradley Byrne
254 State St.
Mobile, AL 36603
251.432.1414 | bbyrne@joneswalker.com

Attorney Advertising. No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.

■ ALABAMA | ARIZONA | DISTRICT OF COLUMBIA | FLORIDA | LOUISIANA | MISSISSIPPI | TEXAS

SHRM ALABAMA STATE COUNCIL

The SHRM Alabama State Council is an affiliate of SHRM (Society for Human Resource Management) the world's largest human resource management association in the world. The State Council is comprised of the presidents of the professional chapters, core leadership area (CLA) directors, and district directors. Our mission is to be the resource for all workplace issues in Alabama and to support the affiliated chapters in the state while also supporting the goals of SHRM. Alabama has fifteen affiliated professional chapters:

- Baldwin County SHRM (*Daphne*)
- Birmingham SHRM
- Calhoun County SHRM (*Anniston*)
- Cullman Area - SHRM
- East Alabama SHRM (*Auburn/Opelika*)
- Escambia County SHRM
- Marshall County HR Management Association
- Mobile SHRM
- North Alabama Chapter of SHRM (*Huntsville*)
- Northwest Alabama SHRM (*Winfield*)
- SHRM - Montgomery
- Shoals Chapter- SHRM (*Florence*)
- Tennessee Valley Chapter of SHRM (*Decatur*)
- Tuscaloosa HR Professionals
- Wiregrass HR Management Association (*Dothan*)

The Alabama SHRM State Conference is currently the State Council's only revenue generating project. The proceeds from the conference are used to financially assist the chapters with Human Resource Certification Institute (HRCI) training, bi-annual Hill visits to Washington DC to talk with the Alabama delegation about issues that impact HR and travel expenses to attend SHRM Leadership Conferences.

Last year was the maiden voyage of the HR Alabama magazine and this year it has grown tremendously. I want to thank all the sponsors and advertisers for making this magazine possible; without them we would not be able to produce such quality work. The Anniston Star has done a remarkable job as well. Paula Watkins, John Faure and all the sales team are to be commended for all their hard work. Paula and John's leadership is what made this magazine possible.



Pam Werstler, SPHR
Alabama SHRM State Council Director



More than 465,000 businesses in the U.S. already offer the protection of Aflac.



Shouldn't yours?

Learn how you can offer
Aflac to your employees at
no cost to your business.

Contact:

Brian Mann

256.749.7363

brian_mann@us.aflac.com

Accident | Critical Illness and Cancer | Dental | Vision | Hospital Indemnity | Life | Disability



Individual coverage underwritten and offered by American Family Life Assurance Company of Columbus. In New York, coverage underwritten and offered by American Family Life Assurance Company of New York. Some policies may be available as group policies. Group coverage underwritten and offered by Continental American Insurance Company. Policies may not be available in all states. There may be indirect administrative or other costs.

Source: Aflac Company Statistics, June 2011.

HRAlabama

Table Of Contents

- 10 Gender Wage Gap: The Rest of the Story**
By Charles Wilkinson, SPHR & Carolyn Campbell
.....
- 16 Watch Out! Aggression in the Workplace**
By Jack Howard
.....
- 20 What Makes a Good Manager? And How Do I Hire One?**
By Fred Rogan
.....
- 24 Be Nice And Play Fair. Non-Legal Advice From Two Attorneys**
By R. Bradley Adams and Kelly D. Reese
.....
- 28 Moxie in Motion: HR as Catalyst for Strategy Execution**
By Doug Dean, CCP, SPHR
.....
- 36 Leading the People Who Are Left**
By Michael Alan Tate, CMF
.....
- 44 Investigating & Responding to EEOC Charges**
By Tammy Baker
.....
- 48 Twenty-One Reasons Why Obvious People Problems Don't Get Addressed**
By John Faure, SPHR
.....
- 52 Self-Sabotage: The Top 7 Employer Mistakes**
By Katherine E. Reeves
.....
- 56 Who's Responsible For Training Your Employees on Social Media Ethics?**
By Andrea Walker
.....
- 58 How to Unionize Your Workforce**
By Richard Lehr & David Middlebrooks
.....
- 64 HR: The Next Generation**
By Paula Watkins, SPHR
.....
- 66 The Secrets of Getting The Most From Your Recruitment Advertising**
By John Faure, SPHR & Dawn Hrdlica Burke, PHR



► Senator Richard Shelby (R., AL) with Alabama SHRM Members in March, 2012



► SHRM Alabama members with Rep. Mo Brooks (R., AL) in March, 2011



► Alabama SHRM State Council on the Capitol steps March, 2009



► SHRM Alabama members in front of the Rayburn House Office Building, September, 2010



► SHRM Alabama members on the Fall, 2010 Hill Visit



► Alabama SHRM members in a House Office tunnel

Gender Wage Gap: The Rest of the Story

By Charles Wilkinson, SPHR and Carolyn Campbell

Most HR professionals are probably like us in the sense that when we hear government officials or members of the news media cite the statistic that women make 81 cents for every dollar that men make we become very uncomfortable and want to know more about why. It's almost hard to believe that this could even be true in 2012. Since most of these "drive by" remarks in the media rarely include any substance to back it up, we set about reviewing some of the most recent research to answer the burning question of why. Like us, you may be surprised by what we learned.

INTRODUCTION

Women have made significant progress in the past three decades in a number of important ways. Younger women are now more likely than younger men to have a college degree, and more women than men have received graduate degrees. An increasing percentage of women are working (and in higher-paying occupational categories traditionally dominated by men) and the number of women in the labor force has nearly equalized that of men in recent years. These gains in education and labor force involvement have not, however, fully translated into wage and income equity for women. But why?

BY THE NUMBERS

The gender wage gap, which by definition is the difference between wages paid to women and men, has been a source of both political debate and economic research for at least the past three decades. The wage gap is most commonly calculated as the ratio of the median earnings of women and the median earnings of men, which indicates the percentage of male earnings that the female earnings represent. When the ratio is calculated for all full-time men and women who are paid wages, the measure is often called the "raw" gender wage gap.

According to the Bureau of Labor Statistics (BLS) 2010 Highlights of Women's Earnings Report (July 2011), women who were full-time wage and salary workers earned 81 percent of the median weekly earnings of their male counterparts in 2010. For many people hearing this statistic, the first and most natural reaction is that gender discrimination must be the reason. While this may certainly be the case, the statistic alone tells us nothing at all about discrimination.

MORE TO THE STORY

The inherent flaw in the raw gender wage gap calculation is that such comparisons of earnings are on a very broad level and do not take into consideration many relevant factors that can be significant in explaining earnings differences. The statistic does not take into account what most employers commonly consider to be "compensable factors," such as differences in experience, skill, etc. It does not, for example, compare the wages of female doctors or lawyers to male doctors or lawyers; it compares all working women in an industry or occupation with all working men. Not surprisingly then, there is going to be a gap. This greatly limits the usefulness and meaningfulness of the statistic to fully understand compensation differences.

The other problem is that all too often the gap statistic is quoted with the same fervent belief of a Bible verse, but without the necessary discussion to explain the underlying reasons for the gap. As a result, the raw wage gap is frequently interpreted and used by some as clear evidence of overt wage discrimination against women, and as political justification for legislation and administrative policies governing pay equality. To highlight this concern, in 2009, the U.S. Department of Labor released a report entitled, "An Analysis of the Reasons for the Disparity in Wages between Men and Women." In the Foreword written by Charles E. James, Sr., Deputy Assistant Secretary of the Office of Contract Compliance, he stated that, "...the raw wage gap continues to be used in misleading ways to advance public policy agendas without fully explaining the reasons behind the gap."

AND NOW, THE REST OF THE STORY

According to researchers Blau and Kahn, there are several



**ANNUAL GULF COAST
HUMAN RESOURCE CONFERENCE**
MOBILE CONVENTION CENTER • MOBILE, AL
NOVEMBER 9, 2012

Welcome Reception:

Thursday, November 8, 2012
from 6:00 pm - 8:00 pm
Hampton Inn & Suites • Downtown Mobile, AL

Conference:

Friday, November 9, 2012
from 7:30 am - 4:00 pm
Mobile Convention Center • Downtown Mobile, AL



Meagan Johnson
Keynote Speaker,
Opening – General Session
Topic: Zap the Gap

*Book signing following
at America's First Federal Credit
Union Exhibitor Booth*



Tom & Kelly Woodford,
The Kullman Firm
General Session - Legal Update



Robert Holmes,
Retired Alabama Power
Concurrent Session - Ethics and HR



Salome Barrientos,
HHS Investigations
Concurrent Session - eVerify & I-9 Audits



Greg Dillion,
Georgia Institute of Technology
Concurrent Session - Strengthening the Link
Between HR, Safety and Risk Management



Mary White,
MTI Business Solutions
Concurrent Session - Leadership Essentials:
What Separates Leaders from Managers



Jeremy York,
Director of HR - Novia CareClinics
Concurrent Session - Performance Management



HRCI CREDIT APPROVAL PENDING

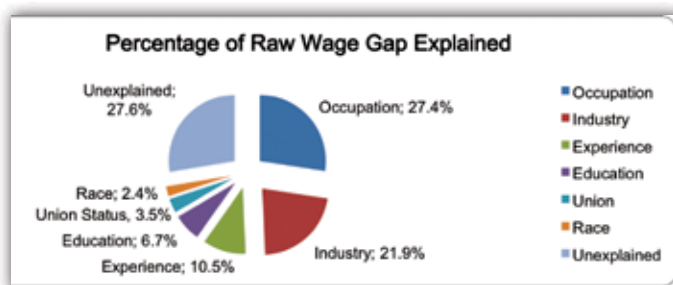


\$99 - Early Bird Registration begins July 1, 2012

Visit www.mobileshrm.org for more information or email conference@mobileshrm.org

primary factors that individually and collectively explain most if not all of the observed difference between wages paid to women and wages paid to men. In fact, research shows that the following factors may explain as much as 72.3% of the wage gap (or nearly 14 of the 19 cent gap): occupational choice, industry sector, education, work experience, race and union status. In addition, various research indicates that the 27% unexplained portion of the gap can be attributed to individual choices that impact earnings, including motherhood, career interruption, compensation expectations, willingness to negotiate, hours worked (including overtime) and cash paid as a tradeoff for lack of benefits. Figure 1 illustrates the estimated percentage of the raw wage gap explained by each factor.

Figure 1: Factors Explaining the Raw Gender Wage Gap



Information Source: Blau and Kahn, "The Gender Pay Gap," *Economists' Voices* (June 2007)

Role of Occupational Choices

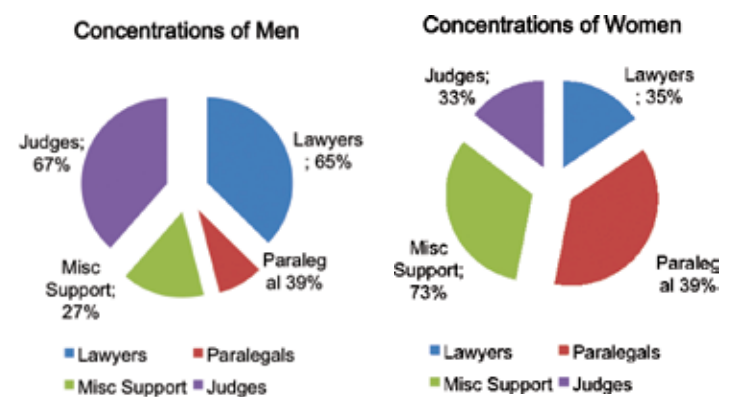
Historically, men and women have made different occupational and career choices. As a result, the percentage of female workers often varies significantly among occupations. Researchers have independently and consistently concluded that the main factor accounting for the gender wage gap is differences between the occupations in which men and women typically work. This factor alone is credited for explaining 27.4 percent of the raw gender wage gap.

Whether by choice or limited opportunity, women have been disproportionately represented in occupational classifications with relatively lower wages (e.g., education, service, sales, clerical) and men have been disproportionately represented in occupational classifications with comparatively higher wages (e.g., construction, financial, engineering, scientific). As a result, the average and median earnings of women in general have been much lower than the average and median earnings of men in general.

In each of the twenty-two (22) occupational categories tracked by the Bureau of Labor Statistics, women are reported as earning less than male counterparts. This can be partially explained by examining the various job titles within each occupation. Doing so further reveals the inherent flaw in this statistic.

For example: According to the Bureau of Labor Statistics, the category of legal occupations has the largest raw wage gap, with a difference of 43.4%. Within this classification, there are four (4) sub-sets of jobs: (1) lawyers, (2) judges, magistrates and other judicial workers, (3) legal assistants and paralegals, and (4) miscellaneous legal support workers. Men are disproportionately concentrated in the "lawyer" title (77.2%) while women are disproportionately concentrated in the "legal assistants and paralegals" title (86.7%). Obviously, lawyers are typically much higher paid than either legal assistants or paralegals, and for that reason incumbents in these positions would never be compared to each other by employers during a typical compensation evaluation.

Figure 2: Concentrations of Men and Women in Legal Occupations



Information Source: Bureau of Labor Statistics, 2010 *Highlights of Women's Earnings Report* (July 2011)

This illustration explains why large differences in compensation between women and men can still exist even after controlling for occupational categories, or any other legitimate contributing factor for that matter.

Of course, the wage gap statistic tells us nothing at all about the underlying reasons for the concentration of men or women in certain occupations, and should not be used to do so. While some may argue that the occupational choices of women are limited or "pre-determined" because of stereotype or discrimination, this would seem to discredit the achievements of women who are currently succeeding in positions historically dominated by men, and women who choose to work in positions historically dominated by women.

Role of Personal Choices

According to the U.S. Department of Labor report entitled, "An Analysis of the Reasons for the Disparity in Wages between Men and Women" (2009), research has shown that after controlling for the most predictive factors for the wage gap (such as occupational choices, industry category, work experience, education, race and union status) there remains an adjusted

St. Vincent's Wellness Services

St. Vincent's provides wellness programs designed to help individuals achieve healthier, more satisfying and productive lives. St. Vincent's Wellness staff of health care professionals can provide on-site programs that support your own efforts to improve the health of your employees. From start to finish, our St. Vincent's Wellness team will help you design and deliver custom solutions to help you create a culture of wellness at your company.

Services:

- Wellness Program Consulting
- Wellness Coordinator
- Disease Management
- Executive Health Physicals
- Employee Education (on-site and web)
- Private Consultations (on-site, web, phone)
- Weight Management Classes
- Stress Management Program
- Exercise/Fitness Programs
- Therapeutic Massage (on-site)
- Dial-A-Nurse
- Screening Services with Follow Up
- Tobacco Cessation Program

For more information or to schedule an event, please contact Kimberly Rider at (205) 930-2658 or kimberly.rider@stvhs.com.



Because your time is valuable, the Executive Health Program at St. Vincent's One Nineteen is designed for you. Although the program has the feel of a five-star retreat, the executive physical program features some of the most comprehensive diagnostic testing available anywhere. Throughout the program, you will enjoy quality time with a physician, nurse, technologists, registered dietitians, and exercise specialists. One Nineteen Executive Health Program: one day, one place, one focus...your health.

For more information, contact 205.408.6550.

 St. Vincent's
One Nineteen

gender wage gap that is between 4.8 and 7.1 percent.

The report states that there are factors and observable differences in the attributes of men and women that accounts for most of this remaining wage gap. These include:

- A greater percentage of women than men tend to work part-time. Part-time work tends to pay less than full-time work. In fact, women are nearly twice as likely as men to work part time. In 2009, 66.6 percent (about two-thirds) of American workers working fewer than 35 hours in the typical workweek were women. By comparison, just 45.1 percent of workers logging more than 35 hours a week were women. In 2010, 26.6 percent of women worked part time compared to just 13.4 percent of men.
- Men are more likely to work longer hours than women. The average full-time working man works 6 hours per week or 15% longer than the average full-time working women. It logically follows that if men are working longer hours they are likely being paid more overtime hours, and their earnings will be higher than those of women.
- Men are much more likely to work in jobs that involve more demanding physical labor and extreme conditions such as outdoor work, overnight shifts and dangerous conditions. This would seem to explain why men are involved in the overwhelming majority of injuries and deaths at the workplace.
- Men have been more profoundly impacted by the current recession because they tend to work in fields like construction, manufacturing and transportation, which are disproportionately affected by bad economic conditions. Women are represented in more insulated occupations, such as teaching, health care and service industries. If it is reasonable to accept that the job choices of men and women lead to different unemployment rates, then it may also stand to reason that it leads to other differences—like differences in average pay.
- Women, especially working mothers, tend to value “family friendly” workplace policies more than men. Some of the wage gap is explained by industry and occupation, particularly, the percentage of women who work in the industry and occupation. While it has been suggested that women are concentrated in lower-paying occupational categories because of limited access to opportunities, others would suggest that women gravitate toward jobs with fewer risks, more comfortable conditions, regular hours, more personal fulfillment and greater flexibility. Simply put, many women—not all, but enough to have a big impact on the statistics—are willing to

trade higher pay for other desirable job characteristics.

- A greater percentage of women than men tend to leave the labor force for child birth, child care and elder care. Some of the wage gap is explained by the percentage of women who were not in the labor force during the previous years. While some may argue that this represents discrimination at the societal level and reflects poorly on the cultural norms regarding the role of women, it does not reasonably suggest compensation discrimination that an employer should be held liable for. Thomas Sowell argued in his 1984 book *Civil Rights* that most of pay gap is based on marital status, not “glass ceiling” discrimination, and that earnings for men and women of the same basic description (education, jobs, hours worked, marital status) were essentially equal. That result would not be predicted under explanatory theories of “sexism”. However, it can be seen as a symptom of the unequal contributions made by each partner to raising children and providing other family care.
- Differences not incorporated in current research models due to data limitations may account for the remaining part of the gap. Specifically, the Bureau of Labor Statistics annual *Highlights of Women’s Earnings Report* focuses exclusively on wages rather than total compensation. Research indicates that some women may value non-wage benefits more than men do, and as a result prefer to take a greater portion of their compensation in the form of health insurance and other fringe benefits. Benefits typically account for between 20% and 30% of total compensation, but the influence of this factor on the gender pay gap has been largely ignored by studies.

CONCLUSION

In the Foreword of the U.S. Department of Labor report entitled, “An Analysis of the Reasons for the Disparity in Wages between Men and Women” (2009), Deputy Assistant Director of the Office of Federal Contract Compliance Programs, Charles E. James, Sr., stated that, “...this study leads to the unambiguous conclusion that the differences in the compensation of men and women are the result of a multitude of factors and that the raw wage gap should not be used as the basis to justify corrective action. Indeed, there may be nothing to correct. The differences in raw wages may be almost entirely the result of the individual choices being made by both male and female workers.”

Volumes of economic research have identified numerous factors that contribute to the gender wage gap. Many of these factors relate to differences in the choices and behavior of women and men in balancing their work, personal, and family lives.

Since 1979 when the Bureau of Labor Statistics first started tracking it, the size of the raw gender wage gap has significantly narrowed. Median earnings for women as a percentage of median earnings for men have steadily increased from 62.5 percent in 1979 to 81 percent in 2010. This is largely attributed to the fact that women have been making different occupational choices and are being provided access to more and higher-paying opportunities than in previous decades.

The one thing that all research on the subject seems to demonstrate is this: that it is not possible now, and will doubtless ever be possible, to determine with absolute certainty what portion (if any) of the gender wage gap is attributable to factors that compensate women and men differently due to overt discrimination against women.

Even if 100% of the gender wage gap cannot be fully explained by the impact of legitimate factors related to the personal choices of men and women that current research would have us believe, it seems unreasonable to conclude that the entire gender wage gap is attributable to gender discrimination.

Unfortunately but most certainly, compensation discrimination does exist in our country. Landmark cases like that of Lilly Ledbetter are regular reminders that while much progress has been made, much work yet remains to ensure equal employment

opportunity for all. But, using the gender wage gap statistic to summarily conclude that any and all pay differences by gender is the result of discrimination without examining the other potential reasons may well prove to be a hasty generalization.

Sources:

Blau and Kahn, "The Gender Pay Gap," Economists' Voices (June 2007)

Bureau of Labor Statistics, 2010 Highlights of Women's Earnings Report (July 2011)

Bureau of Labor Statistics (BLS), 2010 Highlights of Women's Earnings Report (July 2011)

Thomas Sowell, Civil Rights: Rhetoric or Reality (1984)

CONSAD Research Corporation, U.S. Department of Labor, "An Analysis of the Reasons for the Disparity in Wages between Men and Women" (2009)

White House Council on Women and Girls, "Women in America-Indicators of Social and Economic Well-Being" (March 2011)

CHARLES WILKINSON, SPHR (charles@hrmasap.com) is CEO of Human Resource Management, Inc., a human resource consultancy based in Birmingham, Alabama.



CAROLYN CAMPBELL (carolyn@hrmasap.com) is Chief Development Officer for Human Resource Management, Inc.



Employees are more than just numbers

YOU CAN COUNT ON HUB FOR CUSTOMIZED EMPLOYEE BENEFITS SOLUTIONS

CONTROL COSTS

ENSURE COMPLIANCE

CUSTOMIZE PROGRAMS / SOLUTIONS

REDUCE ADMINISTRATIVE WORKLOAD

HUB works with you to build better employee benefits programs for your employees. We simplify processes, customize solutions, reduce the administrative burden and control costs. Our expert employee benefits team helps clients navigate the complexities of health care reform to ensure compliance while promoting wellness among employees. Our #1 priority is to ensure that you and your employees receive the "Best in Class" service that HUB is known for.

To learn more about HUB's expert benefits team and customized program solutions, go to hubinternational.com.

HUB International
www.hubinternational.com

Mike Loncono, RHU, REBC, RPA, CEBS
mike.loncono@hubinternational.com • 251-633-8556

At your service in all 50 United States and the provinces and territories of Canada.



Watch Out!

Aggression in the Workplace

By Jack L. Howard

During a departmental meeting at the University of Alabama-Huntsville, a faculty member opens fire on her colleagues. An employee enters the workplace and begins shooting coworkers. While many coworkers escape, some die. An Army doctor opens fire killing 13 in his rampage. At the Montgomery Post Office a former employee fires two shots in 2011. Fortunately no one was hurt in that particular incident. On December 14, 2011 a supervisor was stabbed to death at a grocery store in the greater Birmingham area.

These are the types of incidents that capture the media's attention with three of the incidents occurring in Alabama. As a result, some people envision these high profile events as the primary type of aggression in the workplace. Estimates made by NIOSH indicate that workplace violence, the most extreme and least frequent form of workplace aggression, cost businesses \$6.5 billion from 1992 through 2001 just addressing the homicides. This does not include any other injuries, turnover or reduced productivity associated with these extreme situations.

While no hard statistics exist regarding the costs of aggression and bullying, research has demonstrated that they occur more frequently than violence. Furthermore, if someone is distracted by these types of issues, they are not producing at 100 percent. Consequently it is important to recognize that there are costs associated with these more frequent but less severe behaviors in the workplace. The purpose of this article is to raise the awareness of HR professionals in Alabama of the various types of aggression, the potential perpetrators, and the steps that can be taken to provide a safe workplace.

AGGRESSIVE BEHAVIORS

Aggressive behaviors take a variety of shapes. While there can be many different definitions, a framework to better understand aggression in the workplace breaks it down into three primary categories. The lowest level consists of expressions of hostility. Examples of this level consist of employees making negative comments towards one another, the use of gestures towards one another or yelling at each other. The second level is obstructionism and includes actions by an employee towards another employee to limit the ability of the employee to complete his or her job. An example of this behavior can be withholding information that an employee needs to perform his or her job. Finally, the third level of behavior is overt aggression and often times involve aggressive behaviors that are physical in nature, often times referred to as violence.

A related concept is workplace bullying. Bullying differs from aggression in that aggression can occur once. It can also occur multiple times. Workplace bullying, however, is repeated and is often aimed at adversely affecting one's ability to perform at work. Whether this is hazing of new employees, such as a passage of rites in some occupations or fields, or this is another employee picking on or singling out another employee, it occurs on a repeated basis over time.

In terms of the three level framework, overt aggression, while covered in the press, is the least likely to occur. That does not mean that it should be ignored. Rather, it is important to understand that obstructionism, expressions of hostility and bullying are more likely to occur. Whether

you want to call this a lack of professionalism or incivility in the workplace, it occurs more often than the violence associated with tragic results that is covered in the media. Furthermore, it represents a considerable cost to organizations. If an employee who performs well decides to leave an organization, there is a cost to replacing that employee. If an employee is distracted and does not focus fully on his or her work, mistakes can occur. While these do not represent direct costs, as HR professionals we understand the costs associated with turnover and a poor organizational climate, and how that can lead to other costs that can affect an organization's bottom line.

PERPETRATORS OF AGGRESSION

If you only pay attention to the media it might be easy to believe that most aggression in the workplace is from one employee to another. While that represents a considerable portion of the aggression that occurs, it is rarely limited to employees. One way to view perpetrators is to first break them into two categories: organizational insiders and outsiders.

Organizational insiders consist of employees and former employees. These are individuals who share two common characteristics. First, they can have similar reasons to be upset with the organization and/or its representatives. Employees and former employees who believe that they have been treated unfairly or unjustly could be upset for the same types of reasons. Layoffs, lack of career progression or even a lack of due process can cause employees and former employees to become aggressive. Being treated poorly by coworkers, believing that they are discriminating against an employee has caused these types of behaviors. Second, employees and former employees have knowledge about the organization's layout, its security and where offices and people are located. This is information that not all organizational outsiders would have intimate knowledge of.

Organizational outsiders include a wide range of people and should be taken seriously. According to the Bureau of Labor Statistics, organizational outsiders are responsible for some of the aggression and violence in organizations. Spouses of employees could be a potential perpetrator. In particular, an estranged or former spouse often times knows when and where their former spouse works. While someone might know that their spouse is potentially violent, they might not be willing to talk about it at work or might not be able to easily change jobs. Another outsider is customers or visitors. In an economy that is largely service based, many organizations rely on open access in order to conduct business. This opens the doors of opportunity for not only upset customers but for individuals that might have crime-related motives. Interacting with the public and the handling of

money are two of the top factors related to workplace violence, which is a form of aggression.

A final group of potential perpetrators for an organization consists of employees who are contractors or vendors. Depending on the organization, these employees may be considered organizational insiders or they may be considered organizational outsiders. The classification is not important; it is the recognition that even these individuals could be a perpetrator of workplace aggression.

STEPS TO TAKE TO ADDRESS WORKPLACE AGGRESSION

While there are several steps an organization can take to address workplace aggression, unless an organization acknowledges that it can happen and takes it seriously, it will be ineffective in addressing the issue. For example, in the 1990s, there were several instances of workplace violence involving the US Postal Service. Subsequently, in a study of 2000 organizations, only 186 responded indicating that this was a concern for their organization and that they had developed a policy to address it. Furthermore, in many of the incidents which the media covers it is stated that the workers and the organization never thought it would happen there.

A zero-tolerance policy is NOT the answer. Given this, what should an organization do? The first step is to develop a policy. While some organizations believe that a zero tolerance policy is the answer, it also puts an organization in a situation where it has no discretion. For example, if an organizational policy states that any act of aggression results in termination, does this mean if someone forgets to provide information to another employee and this is perceived as obstructionism that the person will be fired? While there are no easy answers, a well-articulated policy stating that the organization takes it seriously, will not tolerate it and that it could result in disciplinary action, up to and including termination, should be a good starting point. Furthermore, involve employees from various parts of the organization in the development of the policy. This will assist in identifying a wider range of behaviors as well as potential perpetrators. Understanding the full range of issues will result in a better policy and better understanding of the risks the organization faces. Additionally employees will buy into the policy that is developed, as they will perceive it is relevant to them.

Inform employees about the policy. The policy is not of much use unless employees know about it, so it is important to communicate the policy once it is developed. This should involve some training of employees on the policies, their existence and their provisions, assisting the organization in empowering its employees. Empowered employees understand that their employers will back them when they take the necessary actions to address a situation. Employers desire a workforce that knows what to do and when to do it. This involves communicating the policy to employees once it is developed.

Furthermore, as employees enter the organization they should be provided training as part of orientation that includes this policy and the organization's stance.

Be consistent in handling issues when they develop. Related to communication is consistency of actions. What is important is what is done in addition to what is said. If the policy is violated, the organization should address the violation appropriately. What is most important at this point is to investigate alleged violations in a timely manner and to communicate that this is occurring to the person who reported the violation. Not investigating a complaint is problematic in several ways, one of which is that it can create a perception that the policy is not being followed. This further communicates to employees that this is a serious issue and will be addressed appropriately. This can further empower employees as they now understand that the organization means what it says.

Provide employee training on how to address situations when they arise. Related to communication, training employees on how to address aggression is also important. In order to empower employees, organizations need to train employees on the warning signs of aggression, how to address it once it arises, and the different types of perpetrators that employees the different types of employees might face. For example, supervisors or managers will have to interact with employees. As a nature of doing their jobs, supervisors and managers may have to appraise performance, discipline employees and make pay raise recommendations. Each of these events can be perceived by employees a number of ways. It is not unreasonable to assume that an employee who gets a lower evaluation than he or she thinks they deserve might be upset. Knowing how to manage these situations where employees could become aggressive is important. This is very different from a line employee who interacts with the public might face, as they might have nothing to do with what this particular line employee has done, and may require very different techniques to address the situation. Furthermore, employees can be handled by the organization differently than organizational outsiders such as customers. Tying this back to policy development, involving employees from all areas of the organization can assist in developing training to address the different types of issues as it relates best to the situations for these different types of employee. In other words, not all types of positions will likely receive the same type of training, since the risks and perpetrators can vary from position to position.

Making the case to top management to invest in training. Given the high costs associated with workplace violence earlier in this paper (i.e., \$6.5 billion), it is far more effective to prevent anything from escalating to the infrequent but severe situation of violence. Developing policies, communicating them and then walking the walk are important. There is no doubt that training employees as a means for empowering them to address situations when they arise can address extreme situations. For example, a spokesperson for the Sheriff's office in

Ohio that responded to a school where a shooting recently occurred stated that training for this situation saved lives. A similar situation can be created by all types of organizations. By proactively addressing aggression as it occurs, organizations are communicating a loud message to its employees that it is not tolerated in the workplace. This not only lets employees know what is or is not acceptable, but empowers employees to bring up incidents that are in violation of such policies. When employees see the organization respond, this reinforces the message being sent. By addressing the initial issues of aggression and bullying, this can assist the organization in reducing the likelihood of the problem escalating to violence.

Addressing these issues beyond creating a policy begins with training. Training as the policy is developed or one enters the organization, as well as refresher training. While executives may look at the cost of developing and providing training to employees, what is the cost to an organization's reputation if they are the subject of the headlines of the press or a lawsuit because they are accused of negligence because they did not address a situation? To win a lawsuit costs money. An out of court settlement costs money. The investment of training is much less than these costs. Much like insurance, we pay for it hoping to never have to use it.

CONCLUSION

Workplace aggression is an issue that is broader than what is covered by the media. Most aggression that occurs in a workplace is not known by the public at large. It might not even be known in most parts of an organization, as only those having to deal with it might know about it. Nonetheless it is an important issue and can represent a cost to organizations. Understanding the range of issues, potential perpetrators and steps to take to address it can help you keep your workforce performing at a high level.

JACK L. HOWARD, PhD (jlhoward@uab.edu) is a Professor of Management at the University of Alabama at Birmingham. He has taught at the University level for 20 years and has consulted with a wide range of organizations, from Fortune 100 firms to nonprofit organizations. His current research interests include the effects of politics in organizations on human resource management decisions, legal issues in human resource management, workplace violence and human resource management for small business. Dr. Howard's teaching interests focus on human resource management, compensation and conflict management.



River Region...

We are here to help.

Whether you are new to the HR field or have many years of experience, we bring Human Resource professionals together in the River Region to promote professional growth and development and network opportunities among our diverse membership.

SHRM Montgomery offers opportunities to meet your peers, to exchange ideas and discuss problems through monthly meetings, occasional seminars, legal updates and website information.



shrmmontgomery.shrm.org



Do you have questions?
...regarding Employee Benefits ●

J. SMITH LANIER & CO. HAS THE ANSWERS.

We offer products such as:

- Group Benefits Products (Employer Paid and Voluntary)
- Health Insurance, Wellness, and Disease Management Programs
- Benefit Administration
- Compliance Services
- Communications/ Enrollment Support
- In-house Web Based & Telephonic Enrollment Services
- HR Consulting and Support Services
- Employee Assistance Programs (EAPs)
- Benchmarking Studies
- Employee Surveys



J. Smith Lanier & Co.
Insuring People and Business Since 1868

For more information, please contact Andrew Blankenship at 205-995-5277 or ablankenship@jsmithlanier.com.

10 Inverness Center Parkway • Suite 400 • Birmingham, AL 35242 • Toll-Free: 800-523-1020
Securities and investment advisory services offered through Royal Alliance Associates, Inc., member FINRA/SIPC and a registered investment advisor.
J. Smith Lanier & Co. is not affiliated with Royal Alliance Associates, Inc. or registered as a broker-dealer or investment advisor. 205-995-4464



What Makes A Good Manager? And How Do I Hire One?

By Fred Rogan

Hiring a new manager is always a period of anticipation whether it is a new hire from outside or an insider being put into a management position. We wonder – does this new manager know anything about actually managing people? Does he know anything about employment law? Does she understand how her behavior has an impact on those she manages?

When it comes to hiring new managers, HR professionals have a great deal of skin in the game, so to speak, in that departmental managers are often the eyes, ears and voice of HR in that department. The kind of person that is hired and how he or she performs as a manager may well determine whether employee problems are mitigated at the earliest stage or whether they are exacerbated to become legal liabilities. Particularly since the Supreme Court's rulings in *Faragher* and *Ellerth*, the manner in which managers wield the power vested in them by the employer is of great concern.

Therefore, when hiring managers from outside or promoting from within, if you share the same concerns that I had over a manager's ability to manage people you may be interested in

the following thoughts:

Hiring a Manager is Not Like Hiring Anyone Else

I was working in Human Resources at a bank just before Y2K (remember that crisis?) when we realized that we were losing programmers at an alarming rate. We desperately needed programmers to deal with the impending Y2K doomsday. I hurried over to the bank's operations center to conduct focus groups with the 70 or so programmers we still had in order to determine the reasons we were hemorrhaging programmers.

The bottom line that came out of the focus groups was that the programmers loved their environment, their benefits were excellent and their salaries were adequate. They were leaving because of their management and because they could – they were in demand. The problem was that the small group of senior managers for this group was described by the programmers as moody, unfriendly, unpredictable and unapproachable.

I was told during these focus groups that when programmers passed one of the senior managers in the hall and spoke,



A Benefit Your Employees can Enjoy for a Lifetime!

Call us today to include America's First in your Benefits Package: 205-320-4054



www.amfirst.org

We want to give you the opportunity to see just a few of the membership benefits at America's First:

- Instant issue Visa debit card that earns rewards
- No 2 p.m. deposit cutoff time
- Vehicle and Home Loans
- Free Basic Style Checks with Direct Deposit
- Christmas Club
- Credit Cards that earn Cash Back!
- Checking with Rewards!
- Kid's Account
- Free financial education workshops



Federally insured by the NCUA.

Available to qualifying members only. Certain restrictions apply.



the manager gave no response. If programmers went to their manager's office, there was no predicting whether the manager would be in a bad mood or a good mood. These managers had no business managing people.

The managers were also accused of favoritism because they took smoke breaks and ate lunch only with certain employees on a regular basis. Favoritism can easily become a charge of discrimination, i.e., the person you go on smoke breaks with gets the promotion, the best raise, etc. Even if the raise or promotion to your smoke buddy is deserved, you will have a greater burden to defend your decision.

To remedy the situation, the bank made immediate plans to conduct one-on-one management assessment and training. Some of the managers were able to change their behaviors; some did not and were transferred to non-management jobs.

While every hire is important, the hiring of a person to fill a management role is especially critical. Since it appears that the courts have placed an increasing amount of emphasis on the authority vested in a manager by the employer, it is incumbent upon the employer to see that the person hired as a manager knows how to properly use that authority and will not abuse or misuse it.

In addition to the normal good interviewing practices, here are some things that must be determined to improve your odds of hiring a good manager:

1. *Has he actually had experience supervising the work of others?* How much, how long and at what level? Managing the work of others is really not something to learn on the job except in lower-level positions.
2. *Has she had some formal training in supervision?* Great managers are not born; they are developed through education and experience. Experience is necessary but there are some things that must be learned in the classroom.
3. *Does he have good people skills?* This may be the most important attribute. Good people skills means being outgoing, being articulate while saying what needs to be said, sensing the needs of others and adjusting your behavior accordingly, being courteous and respectful of others and being a good listener.
4. *Is she technically competent in the field in which she will be supervising?* Employees will be coming to her asking technical questions. Nothing causes a manager to lose credibility faster than not being able to answer these questions or giving wrong answers.
5. *Does he have good judgment?* Whether a person has good judgment is very difficult to ascertain but you can get insight into judgment by asking him why he did some of the things he may mention in the interview process. Remember, it is better to ask about real experiences than hypothetical situations.
6. *Is she selfless and confident enough to develop her staff?* Sometimes people in supervision are so selfish and insecure that they are reluctant to develop the employees that work for them because they think the employees would then be a threat to their

job security. A confident manager does not have that worry, and she understands that the best manager is one who develops her people by sharing expertise, information and power.

7. *Has he had experience in hiring?* Ask about the experience, how many employees he hired and whether he had any prior training in interviewing and selection. One of the most important decisions any manager will make is that of whom to hire.

8. *Does she have an idea of what her area of supervision should look like?* Ask this question on a micro and a macro level. The best management candidate will be able to articulate a vision regarding the details of processes as well as how her area should fit into the big picture.

9. *Has he been in a situation where he had to manage multiple priorities?* Most, if not all, management positions require managers who, like jugglers, can keep many balls in the air at one time and all the while know which ones are glass and which ones are rubber.

10. *Does she have integrity?* Integrity (knowing right from wrong and doing right) is a critical trait for a manager but one of the most difficult to determine in an applicant.

My muse for this chapter was the universal problem that these managers were people who were subject matter experts in a technical field (programming) but who did not have experience as managers, no previous training and the bank did not train them for their roles. An important point: giving people employment law training is important but does not help them with the more important issues of how to deal with employees on a personal level. In fact a manager's inability to do that often manifests itself as an EEOC complaint when actually no employment law violation exists. As HR professionals, we must address both in our management training.

What Makes a Good Manager?

Good managers may be born with some of the traits that make them good managers. However, being a good manager is more than relying on the gifts with which you are born. A good manager must be aware of what it takes to be a good manager and must consciously work on developing those traits as well as the ones that are absent at birth. Some of the traits managers may not be born with are:

Self Awareness – Be aware of when your emotions are elevated and make the necessary adjustments so that it appears you are in control of yourself. How can you manage others if you cannot manage yourself?

Extroversion – This means being able to talk to people, being able to talk to people when it is an uncomfortable, perhaps confrontational situation and being able to draw other people out of their inwardness when necessary.

Good listening skills – Good listening is very self-sacrificial. It means holding what you want to say until you have heard everything the other person wants to say and listening as though you actually believe that what the other person has to say could

matter.

Subject matter expertise – Part of being a good manager is being a technical advisor. You must be a subject matter expert in your field. If your employees realize that they cannot come to you for answers to questions, you will quickly lose credibility.

Balance – Most of your employees want a balanced life. They will want you to have a balanced life so that they know you know what that is, and they can have hopes of having one as well.

Objectivity – Objectivity usually (in this context) means fair and fair usually means balanced, all sides being heard or having the opportunity to present. Being objective means not rushing to judgment, not having preconceived biases and being open to all information no matter where it takes you.

The goal of any (management) training is to change behaviors. No matter what kind of training you are attempting in your organization, you are trying to change some behaviors or introduce new ones.

Putting All of This to Work

The thing about management training or management books is that they do absolutely no good unless the information imparted is actually instrumental in changing someone's behavior. In this case, it is you, the supervisor, manager, director, vice president, president, etc., that needs to accept that perhaps some of your management behaviors need to change. We all need to manage people more effectively. Not one of us is a perfect manager or ever will be.

You must be able to sublimate your ego in order to critically look at how you manage people (or to be able to really listen to others who provide you that valuable feedback) and then actually make changes in your behavior. It is very hard for most managers to accept that the way in which they presently manage people might not be the best way, and therefore, that they need to change. To change behavior like that is hard for managers because their ego tells them that the way they are treating people is the best way to do it. Or, it may be that their ego is so powerful the manager has not even considered what effect his/her management style is having on employees (the epitome of the management jerk).

For every action that you take, there is going to be a reaction from your employees. If you are going to be effective as a manager, you need to manage as if you understand how that works and as if you care how that works. And, you must be willing to change your behavior if you expect the people that you manage to change theirs. You need to show your employees that you respect them and that you are serious about being a good manager. Go put it to work.

FRED ROGAN (cfrogan@samford.edu) is Director of Human Resources at Samford University and has been in HR for over 30 years. He is the author of "What Your Employer Meant to Tell You When They Made You a Manager" published by Aventine Press in 2011.



Dearborn ★
national



HELPING EMPLOYERS HELP EMPLOYEES

800.391.7231

Products and services marketed under the Dearborn National® brand and the star logo are underwritten and/or provided by Colorado Bankers Life Insurance Company (Greenwood Village, CO), licensed in 49 states (excluding New York where it is not licensed and does not solicit business), the District of Columbia and Guam. Product features and availability vary by state and are solely the responsibility of Colorado Bankers Life Insurance Company.

Benefits For America Insurance Services Inc.

The best way to grow your business is to keep your employees happy, healthy and on the job.

Our tools and capabilities make it easier for you to succeed in the market place. Our one-stop-shop approach hasn't changed much since we started in 1999. Perhaps that's because we believe we work for you, serve you and treat you like a person and not a number. Superior service and support make HR administration a breeze, so you can focus on your business.

Payroll Services, HR legal support, COBRA, FMLA – 401k- FSA – HRA – HSA – complete suite of benefits.

WWW.BENEFITSFORAMERICA.COM

Be Nice And Play Fair.

Non Legal Advice From Two Attorneys

By Brad Adams and Kelly Reese

Be Nice. Employers who have been sued for workplace harassment often establish as their first line of defense the following well-worn statement of the Supreme Court of the United States: “Title VII [of the Civil Rights Act of 1964] . . . does not set forth ‘a general civility code for the American workplace.’”

The Supreme Court further clarified this statement by explaining that the “simple lack of good manners” in the workplace is not actionable conduct. Examples of “bad manners” that are not, by themselves, likely to be actionable include the sporadic use of abusive language, off-color jokes, and occasional teasing. Courts refuse to enforce a workplace civility code because they fear becoming “embroiled in never-ending litigation and impossible attempts to eradicate the ineradicable” – boorishness, rudeness, crudity, and poor taste in the workplace.

While courts must draw a line between actionable harassment and non-actionable bad manners based upon a careful analysis of the nature and pervasiveness of the conduct, employers do not have to draw such fine distinctions in developing policies for their workforces. There is nothing in the law that prohibits employers from requiring their employees to treat each other with civility. In fact, employers that establish and apply higher standards for workplace conduct than required by law – standards of civility – will invariably prevent more lawsuits than employers who merely educate employees on how to walk a tightrope between boorish conduct and illegal harassment. The reasons are simple. First, actionable workplace harassment often begins as incivility and develops over time, through inattention and/or indifference, into actionable harassment. Second, employees often wrongly perceive that incivility directed towards them is motivated by discriminatory animus. Consider the situation where a manager routinely berates employees over work issues by yelling and swearing at them and otherwise belittling their work performance in front of coworkers. This same manager, by all accounts, is simply a bad manager and treats all employees who report to him equally poorly, irrespective of race or gender. But from time to time, the manager makes insensitive remarks about women. By the

time one of his female direct-reports resigns after a particularly egregious berating of her work on a project, she has documented a handful of gender-biased comments from the manager that occurred from time to time over a six-month period. When the employee later files a gender-based hostile work environment claim against the employer, the employer may find that it has to defend against not only the infrequent insensitive remarks about women, but the manager’s frequent and severe verbal harassment of the employee which, in reality, had nothing to do with gender. This real-world example underscores the importance of promoting civility in the workplace as the first line of defense against harassment lawsuits. Beyond preventing or minimizing harassment lawsuits, employers that implement and enforce workplace civility codes can create a more positive work environment, which may contribute positively to their bottom line, even beyond the avoidance of legal costs.

Workplace civility is really not different from civility in general. Civility involves the kinds of social behaviors that most parents try to instill in their children from an early age. Most principles of civility can be stated positively or negatively. One positive principle of civility is to speak kindly. The negative statement of the principle is to refrain from berating or belittling others. While there is no law that mandates the former or prohibits the latter, employers that require employees (including supervisors) to speak kindly (even when conveying constructive criticism) can create a workplace in which illegal harassment will have a hard time gaining a foothold. The same is true for other principles of civility, such as taking responsibility (positive statement) and refraining from blame shifting or scapegoating (negative statement). To create and maintain a civil workplace, employers must begin by articulating and communicating higher standards of behavior for employees – standards of civil-



“Connecting the Dots for Workforce Solutions”

AWTS (Alabama Workforce Training System) is a coordinated resource for your training needs. We are your local workforce training partner. **AWTS** can help with supervisory training, maintenance skills training, and continuous improvement programs for your company. Our website can connect you to customized training professionals in your area. Whether you are a new, existing, or expanding business or industry, **AWTS** can help with your Workforce Training needs.

So get started now, and visit our website:

<http://alabamaworkforcetraining.accs.cc/WorkforceTraining.aspx>



ity. Traditional harassment avoidance training, while necessary, may not be enough to create a civil work environment. Some may object that civility standards are so general that no employer could enforce them with any kind of consistency. However, many HR departments find that they are able to consistently and fairly discipline employees for policy violations based on amorphous concepts such as insubordination. Thus, there is no reason why employers would not be able to enforce a policy to discipline supervisors who berate or belittle their subordinates -- even when the supervisors do not act with illegal animus (e.g., race or gender discrimination). What can HR professionals do to foster workplace civility?

- Start at the top. Incivility is no respecter of title or position. Employers should apply the same civility standards to all persons regardless of the offender's position on the organizational chart. Incivility by executives and managers cannot be overlooked as "just an aggressive management style." Nor can it be excused if a manager treats everyone with incivility—on the contrary, it is a liability.

- Set the bar high. A "zero tolerance" baseline for incivility should be established, communicated, and modeled. This does not mean that every offense must result in termination. However, offenses should be documented and disciplinary action should be meted out accordingly.

- Teach civility. Employees should be informed from orientation forward that civility is a core organization value of the employer. Expectations about employee interactions should be articulated regularly. Basic training in the skills of interpersonal dynamics (e.g., conflict resolution and team work) should be required at all organizational levels.

- Pay attention. Solicit anonymous input throughout the organization (at all levels) to identify patterns of incivility by repeat offenders through normal human resources channels. Post-departure interviews are often a good source for such information as former employees typically no longer feel threatened by potential offenders.

- Act swiftly. Incivility should not be ignored or tolerated. Remedial action, after a substantiating investigation, must be taken.

- Play Fair. Like civility, an absence of fairness in the work place (or at least a perceived lack of fairness) can fuel employment litigation in situations where unlawful discriminatory animus may very well not exist. Indeed, one common thread woven through many employment lawsuits is a firm conviction by employees that they have been treated unfairly. In some cases, an employee's perception of unfairness may not be unfounded. Employers simply do not always treat all employees the same. Subjectivity reigns in the workplace! Just as the law does not prohibit incivility in the workplace, the law does not protect employees from being treated unfairly. It only protects them from being treated unfairly for certain prohibited reasons (e.g., because of their race or gender). Many employees do not seem to understand that there is not a legal remedy for every act of unfairness in the workplace. More importantly, some employees

wrongly assume that unfairness in the workplace is the product of discrimination. In our view, this faulty assumption is often the source of baseless employment lawsuits, and regrettably, comes at a high cost to employers. In order to minimize employment lawsuits, employers should strive not merely to comply with the law, but also to deal fairly with all employees.

Employers may be well-served by going beyond adopting, communicating and enforcing strong policies prohibiting discrimination and retaliation in the workplace. While those measures are critically important, many employers significant time and money to their implementation and related training. Yet, despite such efforts, find themselves defending employment lawsuits that are based on nothing more than a misperception of unfairness constituting discrimination. For example, managers who hire or promote employees because they attended the same college have violated no law against discrimination. However, they may have invited a discrimination lawsuit from the person who was not hired or promoted.

Sometimes HR professionals and employment law counsel focus on what is legally required or legally advisable to the exclusion of promoting a workplace that is not only fair, but perceived as fair by employees. While an employer's good faith efforts to provide a discrimination-free workplace may enable the employer to ultimately prevail in a discrimination lawsuit, such efforts alone probably will not prevent employees from filing such lawsuits in the first place. Fairness in the workplace, however, may help further minimize such claims. Following are a few ways HR professionals can promote fairness in the workplace:

- Provide employees with avenues to communicate with management about all work-related issues, not just perceived discrimination. Open-door policies, town hall style meetings, "team" meetings and other communication outlets can show employees that their employer values their input.

- Take all complaints seriously, not just discrimination complaints or issues that are perceived as potentially having adverse legal ramifications for your business. An employer's unsatisfactory response or failure to respond to a complaint of unfairness may lead the employee to later believe that the situation was the product of discrimination.

- Be consistent. Exceptions, particularly those that are significant to employees and left unexplained, create problems. For example, many HR departments regularly post available positions as a part of their hiring process. An employer may find itself in a situation where it does not follow this process – e.g., it may have a business need to quickly identify a qualified employee and promote them to fill a critical open position as soon as possible. If the employer does so with no explanation, however, it may leave itself vulnerable to lawsuits. When the employer makes a significant exception to its normal promotion practice, it leaves employees passed over for the promotion left speculating why the promotion occurred in such a fashion and possibly surmising that it was the product of discrimination.

While there are no simple or complete solutions to



Thorough. Courteous. On Time.

Moxie in Motion:

HR as Catalyst For Strategy Execution

By Doug Dean, CCP, SPHR

mox·ie (m k s)

n. Slang

1. The ability to face difficulty with spirit and courage.
2. Aggressive energy; initiative.
3. Skill; know-how.

If your organization has perfected the execution of strategy and has sustained flawless results on a balanced scorecard over a five year period, you can stop reading now. Congrats. The remaining majority, pour a cup 'o Joe and pull up a chair, and let's explore HR's role in "unfreezing" the execution lethargy.

Consider the events of your organization in the last 30 days - all the conversations, meetings, and the hundred judgments you and your colleagues were required to make, from the mundane to the more strategic.

Chances are, in those mere 30 days in your organization, there were numerous missed opportunities, as initiatives fell prey to poor handoffs (aka email), underground pockets of resistance, the committee that moves at a glacial pace, or even employee disengagement just to name a few hobgoblins.

Chances are there were potentially game changing strategic discussions which lacked the unfiltered and passionate debate of ideas that is at the heart of creating commitment. And when that happened, chances are leaders fell prey to fear of conflict, resorting to veiled discussions or guarded comments. Or worse yet, leaders with valuable management information became silent nodding bobble heads, unable to summon the courage to engage the conversations which are crucial to results.

Now multiply that number of missed opportunities, failed results, or mismanaged strategic discussions that occurred in the last 30 days by 12, and you have a visual of the toxic impact that can occur over a full fiscal year, much less over a longer business

cycle. It is the ugly anatomy of how organizations can slip from great to just "good", or worse.

If we assess honestly, too many of our organizations continue to fall short of the organizational excellence that is required to brilliantly execute strategy, and gain competitive advantage that lasts.

As Shane Yount of Competitive Solutions, Inc. puts it, "Leaders are often confused, frustrated and overwhelmed by the state of their organizations. This current state has been created, perpetuated and sustained by a lack of structure, discipline and habit. In fact, over the last fifteen years, many performance improvement initiatives have educated and reinforced an environment of unclear standards, ambiguous accountability structures, and vague expectations. This current state is debilitating leadership as they are finding their job expectations and accountabilities increasing on a daily basis while many hourly level employees maintain the same level of responsibility."

For a host of reasons, organizations have enormous challenges in sustaining learning, development, and change, and even greater challenges closing the gap between intention (the plan) and execution (the actual results).

A Fortune magazine article suggested that 70% of executive failure was related to poor execution.

The Fortune authors, Charan and Colvin, go on to make a piercing observation about CEO's who fail:

"You'd never guess it from reading the papers or talking to your broker or studying most business books, but the failure is about bad execution. As simple as that: not getting things done, being indecisive, not delivering on commitments. The results are beyond doubt. So how do CEOs blow it? More than any other way, they fail to put the right people in the right jobs - and

Alabama's Only Specialized Staffing Providers



ResourceMFG

RESOURCEMFG IS THE LARGEST
MANUFACTURING STAFFING COMPANY IN
THE COUNTRY

With more than 50 locations in 20 states and over 7,000 workers on assignment. We place workers in manufacturing jobs. It's all we do. Period. At ResourceMFG, we have the staff experience with over 30 years in the manufacturing sector that enables us to provide more effective solutions and support for your business.

Anniston, AL – (256) 886-8971
Auburn, AL – (334) 501-1655
Birmingham, AL – (205) 862-3583
Columbus, GA – (706) 327-7877
Dothan, AL – (334) 523-8969
Eufaula, AL – (334) 687-7460
Huntsville, AL – (256) 715-9644

www.resourcemfg.com



ProLogistix

PROLOGISTIX IS THE LEADING LOGISTICS
STAFFING FIRM IN THE COUNTRY.

With more than 40 million man-hours recorded the past five years, we have extensive experience filling all levels of logistics positions ranging from entry-level, skilled, and managerial talent for the warehouse to senior executives of supply chain. Whether you are looking for temporary, temp-to-hire or direct hire, ProLogistix is the place to start.

Montgomery, AL – (334) 481-1694
West Point, GA – (706) 407-4196

www.prologistix.com

Mind over risk:

Coverage for
businesses
that dare to
venture.

For firms with self-funded health plans, it's never been more important to understand potential risks and choose quality stop loss coverage. At HCC Life, we bring over 30 years of medical stop loss experience, industry-leading financial ratings and experts who know what to do with it all. Intelligence beats the odds every time.



HCC Life

Contact

Shaun Johnson (770) 693 6541
ssjohnson@hcclife.com

hcc.com/life

A subsidiary of HCC Insurance Holdings, Inc.

the related failure to fix people problems in time. Specifically, failed CEOs are often unable to deal with a few key subordinates whose sustained poor performance deeply harms the company. What is striking, as many CEOs told us, is that they usually know there's a problem; their inner voice is telling them, but they suppress it. Those around the CEO often recognize the problem first, but he isn't seeking information from multiple sources. As one CEO said, 'It was staring me in the face, but I refused to see it.' The failure is one of emotional strength."

A related study revealed that only 10% of all organizations execute their strategy, and that 85% of executives spend less than one hour a month talking strategy. In addition, only 40% of all organizations tie budget to strategy, and compensation systems are misaligned with only 25% of managers having incentives linked to the strategy.

Yet perhaps most alarming from the study if we indeed believe that our people create competitive advantage, only 5% of the workforce understands the strategy. To put it more shockingly, 95% of employees do not really comprehend the organizational strategy. You can certainly argue that the study's figures are overstated, but few would credibly argue that more than 30% of workers truly grasp strategy at an "actionable" level.

What's going on here, and what is the role of HR leaders and practitioners in breaking out of the slumber of mediocre execution, whether that exists in just a few pockets of our organization or is more widespread?

It is against this backdrop of organizational struggle that I submit the simple premise of this article: The HR profession has an opening to become catalysts for strategy execution, but it will require moxie if we are to be successful.

As the definition suggests, moxie involves showing spirit and courage in the face of difficulty. It is marked by an aggressive energy and initiative as we work to create urgency and change. And at the heart of moxie is the skill and know-how that creates the confidence to put forth solutions to our management customers.

My purpose here is to make the case for this premise, while leaving to each of you the exciting task of customizing the solutions which will sizzle for your own unique organization or industry. On one thing we can agree - that "one size" never fits all.

First, let me hasten to credit the many HR leaders in Alabama who have long since been boldly innovating systems of leadership development, selection, performance management and other people practices which help create superb execution. Bravo! Share the ingredients of your secret sauce with HR colleagues if the innovation or approach is not proprietary.

Still, the majority of us can identify one or more areas of organizational performance which are ripe for solutions and strategies which exist within the disciplines of the HR profes-

sion, if we can simply summon the courage to build, test, sell, and implement them.

As Birmingham HR veteran and consultant Sharon Lovoy put it, “There can be a lot of excitement generated at the outset of a process. But what seems to happen in many of our businesses is similar to a New Year’s resolution. We are all excited at the beginning, and then it becomes hard work, and we lose momentum. We’re full of good intentions, but what we need to do is get people energized about their roles in business processes. This will help us sustain performance and the change required for results. The reality for us as HR leaders is that we can powerfully influence results in our organizations. And doing so does not even require a high level of formal authority.”

Where to best begin? If indeed CEO’s who fail at execution do so in large measure because they fail to put the right people in the right jobs, let’s start there. What are some of the key elements of succeeding on this front?

Achieving the right people, in the right job, at the right time could lead us in numerous strategic directions, but let’s focus for now on just three. Enterprise design / business process, workforce planning, and talent management – all of which are right in the wheelhouse of powerful HR solutions, and can usually be accomplished with credible and impressive ROI’s.

Enterprise design and Business Processes

1. What is the right enterprise design? Is the flow of performance information built for speed? Are there customer or employee bottlenecks or “pain points”? Is an overemphasis on hierarchy or management levels fostering disruptive turf wars or problem solving speed bumps?
2. How should we structure the organization to enable different lines of service/business to focus and execute effectively and leverage capabilities across the lines of service/business?
3. What functions/activities should be centralized/standardized versus owned locally?
4. Is our organization still managing by personality, or have we built non-negotiable business processes that create and sustain a sense of urgency and shared accountability?

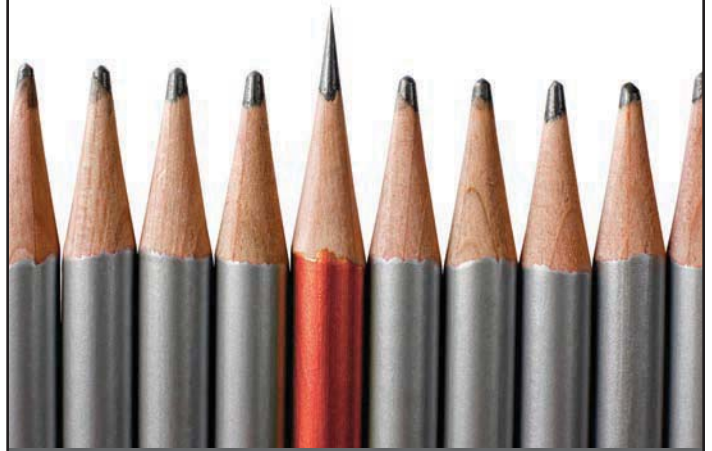
Desired outcomes:

- An organizational model that facilitates timely, effective decisions and rapid resolution of problems and customer “speed bumps”.
- Consistent business processes ensure timely action, follow-up, and documented closure on tasks, goals, and results. Manager as “dumpster” for multiple issues is replaced by greater line level resolution.
- Proven leaders who have “internalized” operational designs and are prepared to lead implementation and manage change.

Workforce Planning

1. Do we have a roadmap to understand and manage our

PERFORMANCE



RESULTS MATTER. How does your law firm perform? To succeed, you have to be sharp and ready to perform when the pressure is on.

Our Labor and Employment attorneys advise employers regarding every aspect of the employment relationship, including issues with policies and current employees, litigation of disputes, union avoidance and maintaining a safe workplace.

Burr & Forman is a multi-disciplined firm with offices throughout the Southeast. If results matter to you and you want them to matter to your law firm, give us a call.

the law firm of

BURR • • • FORMAN

results matter



www.burr.com • 800.GET.BURR • www.resultsmatterradio.com

No representation is made that the quality of services to be performed is greater than the quality of legal services performed by other lawyers.

workforce today and going forward?

2. Are we addressing the gap between the current state and the desired state?

Desired outcomes:

- A comprehensive understanding of internal and external labor markets.
- Strategies to fill gaps between current state and future state.
- Comprehensive strategies for employee retention and development.
- Metrics that monitor skill gaps and progress towards the goal.
- Total reward systems that are effective and paying and promoting the right people.

Talent Management

1. Do we understand the skills, capabilities, interests and potential of our workforce?
2. Are we providing accelerated development for employees at all levels?
3. Are we matching internal resources with learning opportunities, using development plans, coaching, and mentoring?
4. Are we managing the poor performers “up or out”?

Desired outcomes:

- A well choreographed organization-wide approach to:
- Identifying existing skills, capabilities and potential within the organization
- Developing and deploying talent
- Succession planning
- Increased bench strength in our talent pool through the right mix of external talent acquisition and internal development
- High-potential development programs in place across the organization
- Filling key roles with internal talent

These three areas of organizational performance are by no means all inclusive in core services offered by our HR Business Partners to our management customers, but they are certainly high value when done with excellence. Most HR leaders in my circle of colleagues are deeply involved in one or more of these three high potential, high risk arenas, and there is great benefit in sharing best practices and lessons learned across our SHRM membership in the state.

Whether you develop a plan of attack on one of these large strategic HR fronts or on another is not as critical as the point that you work on the big, hairy, and even “messy” problems that are vexing some area of organizational performance. Therein lies the moxie required of you as an HR professional – you will not labor quietly in the back office, but in the spotlight.

Most of us have, or will eventually have to shake the pregame jitters that go with taking on bigger initiatives, so preparation is the key. This is no time to “wing it” on an idea, innovation or strategy. Commit to a rigorous process of research, review of the literature, and testing of proposed solutions on colleagues within the organization, including both finance and operations. And above all, develop and prepare the team entrusted to you to sell and implement the strategy.

For example, if your adopted HR strategy which is aimed at improving execution of strategy will require deploying your HR Business Partners (HRBP) to management customers, it will be important to first ensure that they are equipped and confident to take on the assignment. The table below illustrates some common problems and the potential impact that can arise.

Common Problem Potential Impact

HR staff members do not want to perform more strategic work. Tenured staff members leave rather than change; new HR roles focused on business analysis are hard to fill internally.

HR staff members’ education, skill level leave them ill-prepared to contribute to business strategy. Existing staff members are transferred into roles for which they may be under-qualified, setting them (and the new model) up for failure

Department managers do not want an HR partner involved in business decisions.

HR staff cannot gain access to department-specific information necessary to excel in a strategic role

Frontline staff maintain unreasonable customer service expectations for transactional tasks HR staff in ostensibly strategic roles are left saddled with paperwork, low-level requests

Source: “Elevating the Role of HR Staff” The HR Investment Center (The Advisory Board Company)

A healthcare HR executive colleague of mine in Cincinnati is addressing the above challenges through a smart plan of hiring new HRBP’s from other industries which have a more mature and robust role and business analytics skill among the HRBP’s. HR staff who were less skilled or inclined to do HRBP work were given options to specialize in other areas of HR that they enjoyed. The resulting “game changer” for their HR department was a rapid migration from “Generalist / Employee Relations” work to HRBP’s being welcomed for the solutions they put forth in organizational development, organizational effectiveness, team facilitation, business process analysis, change management and leadership, and individual coaching or intervention.

HRBP Role Clarity and Desired State

Is your HRBP a partner to his/her clients with capacity to meet the client’s expressed organizational effectiveness needs?

Desired outcomes:

- Clients rely upon the HRBP to assess organizational capacity to lead.
- HRBP is a partner, planning through execution of client operational and strategic plans.
- HRBP is welcomed and trusted source and advisor on all fronts, and a seamless extension of their management team.
- Work to cross-pollinate the knowledge and skill of seasoned HRBP's to existing HR staff who prefer that career track, and develop an HRBP certification program internally.
- Use the HRBP training program as a standard for onboarding and training all new HRBP's.

I assure you that HR transformations like described above do not occur without courage of convictions, a well conceived plan, and the passion to "work the plan" to fruition. You will even be met with pockets of resistance from within your HR team – after all, HR professionals are people too.

Most of you recall Mikey of Life Cereal fame. His brothers gave him a bowl of life cereal because they were scared to try it. One brother said, "he won't eat it, he hates everything" and the point of the commercial is that Mikey not only eats it, but likes it ..."Hey, he likes it!" and the whole family lives happily ever after eating Life cereal for breakfast.

Mikey wasn't just hungry that morning – he had moxie. He showed the bravado to try new things that his brothers played it safe on for fear of the unknown.

We need to be hiring and developing more Mikey's on our HR teams. The kind of talented, driven staff with the moxie to innovate – the type who relish the rough and tumble of selling ideas or new partnerships with management customers, and overcoming customers' objections.

As for those of us entrusted with executive HR leadership responsibility, how might we best serve our organizations in unfreezing dynamics which harm execution? Well, we earn our credibility first and foremost through a painstaking record as authentic leaders who care about our people from the lowest to highest ranking.

And we must have developed a vision that flows logically from the organization's mission and vision, and is compelling to our HR team as a purpose "larger than us all" that is exciting and well worth committing sweat equity toward.

And then we must demonstrate initiative – with moxie. Famously depicted by Mel Gibson in the movie, We Were Soldiers, Lt. Col. Hal Moore told his troops, before leaving for Vietnam:

"We are going into battle against a tough and determined enemy. I can't promise you all home alive. But this I swear,



MHCA
Managed Health Care Administration

Comprehensive Behavioral Health Care

- Managed Behavioral Health Networks
- Expanded Psychiatric Services (EPS/EPL)
- Blue Choice Behavioral Health Network (BCBHN)
- Employee Assistance Services
- Quality Improvement

www.mhcausa.com
866.334.6422



Company Picnics ONE CALL, WE DO IT ALL!

*A trusted company with over 15 years
of experience handling every detail of your
company picnic or corporate event.*



Toll Free: 1-888-383-6801

Birmingham, AL:
(205-591-1076)

Olive Branch, MS:
(662) 895-7677

Little Rock, AR:
(501) 565-1448

Nashville, TN:
(615) 242-8211

www.prestopartyz.com

before you and before Almighty God: that when we go into battle, I will be the first to set foot on the field, and I'll be the last to step off. And I will leave no one behind. Dead or alive, we will all come home together, so help me God."

In healthy organizations, the well developed ideas from HR professionals are given a fair hearing, and those whose time has come are implemented, so we are hardly entering "enemy territory" with our teams. Yet we will face challenges as some solutions do in fact require commitment of resources, capital, or management time – all of which deserve to pass the test of scrutiny.

Moxie in HR leadership can take many shapes, and should not be distorted nor trivialized as being argumentative or pushy in the C suite. In fact, that approach only serves to shrink you as a leader, because your professionalism is tarnished or you may acquire the aura of a "hothead".

The courage of convictions should instead derive from the confidence of having invested enormous thought, research, planning, and low-risk testing of HR innovations prior to launch. In Keith Hammonds' scathing read in Fast Company (August, 2005) with the titillating title, "Why We Hate HR", his argument was that most HR professionals simply are not the sharpest tacks in the box, and that we still prefer transactional "administrivia" over actual strategic business issues. While Hammonds' critique was poorly constructed and built on an anecdotal house of cards, he did express a sentiment that exists among our critics.

And if we are to continue the last decade's breakthroughs as a profession, we must acknowledge that there is still work to do in proving the impact of potent HR strategies across all industries and organizations.

Despite a veritable Mount Vesuvius of credible research on employee engagement and its correlation with organizational greatness, Hammonds conveniently dodged the more salient questions –

- Can organizations sustain greatness without measurably superior talent?
- Why aren't more organizations' workers performing at a peak level, with measurably high levels of engagement?

If competitive advantage derives largely from the collective competence, leadership, genius and innovation, customer service, and other results created by people, then there is no debate over the value of strategic HR. There is really only the question of how a particular organization sees fit to build the talent management systems that will ensure sustained results and greatness. Moreover, you can no more logically fault the human resource profession for its own instances of incompetence or transactional leadership than you can fault the entire accounting or finance profession for the demise of Enron, Worldcom, or Tyco in which employees and investors saw retirement savings vanish.

As a profession, do we have sufficient moxie to take more

risks, such as piloting new and promising predictive tools in selection processes? And such efforts need not be designed as "all in bets" – they can be forthrightly put forward as important R&D projects with an open mind to having to exit the strategy, yet with the potential for dramatic ROI.

Or are we tempted to play it too safe at the expense of our organization, eyes fixed on simply staying in office? The responsibility entrusted to us as caretakers of the largest investment of the company – the people – suggests that risk-taking and never becoming complacent in the comfort of one's position is even more critical for the HR leader. Because as then Yahoo! CHRO Libby Sartain put it, "If you're not nurturing the investment and watching it grow, you're not doing your job."

And more than in recent memory, an exciting job we have indeed, with more open frontiers for exploration than at any point in history.

DOUG DEAN, CCP, SPHR, (doug.dean@childrensal.org) is Chief Human Resource Officer at Children's of Alabama, a comprehensive pediatric healthcare organization serving families in Alabama and surrounding areas, recognized by U.S. News & World Report among the top children's hospitals in America. Doug has served in leadership roles on the Birmingham SHRM Chapter Board and Advisory Council.



FRESH MORNING COFFEE IS **NOT** **AN EMPLOYEE BENEFIT.**

But our MAX Advantage is. Now you can reward your employees without taking away from your bottom line by giving them benefits such as:

- **LOWER** Interest Rates on Loans
- **FREE** myMAX Bill Pay with eStatements
- Checking with **NO monthly service fee**



myMAX.com

For more info, contact **Joe Andrew:**
334.215.4642 or **jandrew@myMAX.com.**



Federally insured by NCUA. Certain restrictions apply.



TAMMY L. BAKER is a Partner in the Birmingham, Alabama office of Jackson Lewis LLP. Ms. Baker has experience in all aspects of workplace law, including multi-plaintiff and class action litigation. She regularly advises employers on complex issues, including compliance with the FMLA and other employment laws.

Ms. Baker lectures frequently on employment-related topics, including at national conferences sponsored by the Society for Human Resource Management. She was honored by *Chambers USA* as one of America's best lawyers, selected for *Alabama SuperLawyers* and the *Birmingham Business Journal* named her as "Best of the Bar."

Ms. Baker is a member of Society for Human Resource Management (SHRM) and is active locally, serving on Birmingham SHRM's Advisory Council and regularly hosting a BSHRM Senior Leaders Group Forum. Jackson Lewis is honored to be a continuous supporter of SHRM.

ALL WE DO IS WORK[®]

Founded in 1958, Jackson Lewis, dedicated to representing management exclusively in workplace law, is one of the fastest growing workplace law firms in the U.S., with almost 700 attorneys practicing in 49 locations nationwide. We have a wide-range of specialized practice areas, including: Affirmative Action and OFCCP Planning and Counseling; Disability, Leave and Health Management; Employee Benefits, including Complex ERISA Litigation and Executive Compensation; Global Immigration; Labor, including Preventive Practices; Litigation, including Class Actions, Complex Litigation and e-Discovery; Non-Competes and Protection Against Unfair Competition; Wage and Hour Compliance; Workplace Safety Compliance and Corporate Diversity Counseling. In addition, Jackson Lewis provides advice nationally in other workplace law areas, including: Reductions in Force, WARN Act; Corporate Governance and Internal Investigations; Drug Testing and Substance Abuse Management; International Employment Issues; Management Education, including e-Based Training; Alternative Dispute Resolution; Public Sector Issues; Government Relations; Collegiate and Professional Sports; and Privacy, Social Media and Information Management.

jackson lewis

Preventive Strategies and
Positive Solutions for the Workplace[®]

All we do is work. Workplace law.



Jackson Lewis is affiliated with
L&E GLOBAL
employers' counsel worldwide

Jackson Lewis LLP - First Commercial Bank Building - 800 Shades Creek Parkway, Suite 870 - Birmingham AL 35209

No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.

Leading the People Who Are Left

By Michael Tate, CMF

Mergers, acquisitions, outsourcing, RIFs, downsizings, restructurings and reorganizations are common events these days. Some work well. Most do not. Most result in employees leaving and fewer people remaining to pick up the pieces.

Four or five years ago most of the workers around the world got a rude wake up call. This alarm was especially pointed for the new generation who had experienced a several good years of low unemployment, increased wages, and seeming limitless possibilities. My boomer generation got this message about 20 years ago: The “do-a-good-job-keep-your-job-forever” employment is null and void. The new normal employment deal resembles this plaque hanging in a Cracker Barrel Old Country store:

So it isn't
HOME SWEET HOME Anymore,
Adjust!

Adjusting to the fact that you are moving on to finding a new job is difficult. Adjusting as a survivor can be a more of a challenge than first believed. If you are a surviving manager who has been moved up (without a pay increase) and charged with engaging and leading more employees who moving in to larger roles (without a pay increase) and you feel overwhelmed – consider yourself normal.

In a Center for Creative Leadership study of 909 managers, 70% reported that survivors of downsizing felt insecure about their future and had reduced confidence in their ability to manage their own careers; 72% of the managers indicated the remaining workers felt the restructured or organization was not a better place to work.²

Workers today need tools and support to take charge of, and manage their career. They need to realize that job security is found not inside an organization, but rather in strength of one's competence and network. Who is being called on to help equip managers to lead people with this mindset? If you haven't looked lately, it was added to the unwritten fine print of the HR manager's job description,

Questions HR Professionals are Hearing

In discussions about chronic organizational change and stress that goes with it, these questions are all too common:

- Everyone is required to do more with less. How do you keep people motivated when they feel overwhelmed with no end in sight?
- It feels like loyalty is gone from both sides. How can a person identify with an organization he/she does not really trust?
- Outsourcing is growing. How do you deal with the resentment employees feel about “some non-employee taking my co-worker's job?”
- How do you get your employees to stop thinking, “who is next?” These private conversations and speculations waste a lot of energy and time.

Obviously, all these issues cannot be addressed in this article, but I would like to share some concepts, tools and rules of thumb that I believe touch the heart of this challenge of getting people who are left engaged and contributing their best again.

Three Critical Concepts

1. Learn to manage a constant change process and its affect on employees

David Noer, author of *Healing the Wounds; Overcoming the Trauma of Layoffs and Revitalizing Downsized Organization*, describes the shock or fear by employees who learn their organization will be downsizing as “survivor's sickness” which tends to continue long after the actual RIF has occurred. Noer says that to be effective, leaders need to develop skills in listening, giving and receiving feedback, and responding to feelings. Since these skills probably weren't most of your college curriculum, some managers may be ill equipped to help people move through the stages of personal change successfully.



THE KULLMAN FIRM

A PROFESSIONAL LAW CORPORATION

One focus

One area of practice

Labor and Employment Law

www.kullmanlaw.com

The Kullman Firm was founded in 1946 with one area of practice, and one focus: labor and employment law on behalf of management. We strive to keep our record of excellence and have hundreds of years of cumulative experience which is invaluable to employers seeking assistance in navigating their companies through today's laws and regulations. While many laws have been added since our beginning 66 years ago (Title VII, ADA, ADEA, FMLA, OSHA, ERISA, COBRA, OFCCP, etc.), we still maintain our original philosophy, which is more important than ever – it takes a 100% commitment to give clients the advice and guidance they need and deserve. We invite you to draw on our 66 years of experience representing employers.

New Orleans, LA

Birmingham, AL

Jackson, MS

Columbus, MS

Baton Rouge, LA

Mobile, AL

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers (AL Rule 7.2(e)).

2. Clarify Organization Goals and Individual Concerns

I worked with a technical team consisting of six engineering managers, the human resource director and the general manager. This company had been acquired and restructured several months prior. Production and morale was low. Prior to beginning my work, I asked the team to respond in writing to these two questions:

A) Do you believe that future plans are clear to the members of this team?

B) What percentage of your department understands these plans?

Representing 100 employees in six departments plant-wide, their collective answers were A) No, B) 0%

How would your leadership team respond to these questions?

“ME” Questions

Equally as important as defining the organizational objective is carving out clear roles and getting answers to “me” questions for all workers. Until personal career issues are settled, employees will be too pre-occupied to be productive. Get these questions answered in a hurry so people can get on with business.

These questions include:

- *Will I keep my job?*
- *Will my pay and benefits be affected?*
- *What about advancement opportunities?*
- *Will I have a new boss?*
- *What is expected of me now?*

If you do not know these answers, tell people that you are unsure, promise to get some answers, and follow through with your promise. If you do not provide information, your employees will provide their own. Fill the grapevine with accurate information daily, because the plant grapevine is always growing in one direction or another.

3. Ask People to be Committed to Building a Sustainable Career

Help people be involved in work they love. Emphasize that long-term job security is found in keeping skills updated. Do not focus on providing lifetime employment; no one can promise that. Instead, help your people become employable for a lifetime. To do that requires investing in new skills, training and cross training. Besides having multi-skilled workers, there is another payoff for your investment.



Multiple presenters will cover topics such as:

- **Service Contract Act**
- **OFCCP Audit News**
- **FAR and Labor Categories**
- **HR's Role and Integration with Security Matters**
- **And more...**

(Note: Program will be submitted for HRCI credits.)

Please make plans to attend this workshop

“HR in the Government Contracting Arena”



Cost: \$109

Date: September 11, 2012

Time: 8:00 am – 4:00 pm

Location: Springhill Suites, Huntsville, AL

(Lunch portion only is \$20 members and \$30 non-members.)

For more information and registration, go to

www.nashrm.org beginning in August.

A five-year study showed a remarkably strong correlation between increased profits and productivity and training following work force reduction. Organizations that increased their training budgets after workforce reductions showed more increased profits and productivity than firms that cut their training expenses or kept the training budgets the same.³ See Figure 1-1.

American Management Association Report on Training Budgets, Following Downsizings:	
BUDGETS: Increase (I), Remained Same (RS) and Decreased (D)	
Immediate Results: (Less than 1 year)	
<u>Profits :</u>	<u>Productivity :</u>
(I) 68%	44%
(RS) 42%	29%
(D) 40%	31%
Long-term Results:	
<u>Profits:</u>	<u>Productivity:</u>
(I) 79%	70%
(RS) 46%	41%
(D) 41%	37%

FIGURE 1-1

Identify the Committed

Dr. Price Pritchett, author of *Managing the Stress of Organizational Change*, says that attitudes of people in changing organizations tend to fall into three areas. According to Pritchett, approximately 20% of the workforce will be Committed to their work and immediately embrace the change in your organization; 30% will Resist change and attempt to help others back; and 50% will be Undecided waiting for the most influential leaders with which to align.⁴

Pritchett suggests that you invest most of your energy with the Committed and Undecided. Make sure that the Committed's work is recognized and they are not overworked and burned out. The Undecided are easy to ignore because they often quietly wait for someone to persuade them to join a side. Spend time pulling the Undecided to your team. Understand that some of the Resisters may never join in. Resisters are the squeaky wheels and easily can consume all your efforts. You have limited resources, especially time and energy, so invest them wisely. You will not save everyone when change hits.

Two Tools to Help Manage Change

Assuming that you have a longer-term strategy in place for your organization, you may want to consider two tools, which address both the organizational and the people side if of your business.




Who are we? Founded in 1981, Ward Services is a communication company with over 30 years' experience helping employers provide targeted, consistent communication to their employees.

Providing Communication Solutions One Employee at a Time

Client Testimonial: "Ward Services offers something which we cannot give our members - a personal one-on-one meeting with a benefits representative that helps them gain a better understanding of our benefits programs, as well as providing them with an individualized Benefits Statement at the end of every meeting. This one-on-one communication has proven invaluable in improving our member's perception of the company."

Rachel Stone - Member Benefits Supervisor - Bashas' Supermarkets



For additional information contact David Maddox @ 334.983.5814 and take a minute to view a short impact movie @ <http://www.wardservices.com/movie>

Tool #1 .Create a picture of the present situation and some short-term measurable objectives

Ask your leadership team to respond to the following types of questions:

- How do you see things today? What issues concern you most about the people and work situations at your company?
- What would you like to see happen over the next two months?
- How would you know these things had happened? What evidence would assure you of positive progress? (I.e. behavior you would hear or see in the plant)
- To date, what actions have been taken to help people recover from the past re-engineering project?
- What have you learned from these actions/ events so far?
- What new leadership skills have you developed that are working? What do you want/need to learn to be more effective?
- Do you believe that future plans/company strategy is clearly understood by our team and our workforce?
- What percentage of your departments understand these plans? Who are the committed and the resister leaders in your area?

You might give team members time alone to respond in writing. Then compile the data into a confidential summary to use in a group action planning meeting or asked the questions in a group or one-on-one. Use the approach that sends a message care and commitment and fits your organization's culture. The process is more important than the product.

1-Shock/Denial ➡ <ul style="list-style-type: none">• "Things were so good in the past"• They don't really mean it• It can't happen here• Numbness• Everything-as-usual attitude• Minimizing• Refusing to hear new information• Not telling the truth• Holding back feelings• Repressing reality	2-Resistance/ Bargaining ➡ <ul style="list-style-type: none">• "It's your/their fault"• Anger• Loss and hurt• Stubbornness• Blaming others• Complaining• Getting sick• Doubting your ability• Inability to complete projects• Irritability• Depression• Poor sleep habits• Withdrawal
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

FIGURE 1-2

Tool #2.Understanding Individual Change and How to Help People Move Forward

Several models for managing organizational change and personal transition exist today. Two of the more popular are Jaffee/Scott and William Bridges Transition models. Most models contain several basic phases that individuals commonly

experience when coping with loss or change. A simplified summary of these phases is diagramed in figure 1-2.

In each phase there will be statements or signs that help you identify which stages you or an employee may currently be experiencing. Ideally, people move progressively from denial to resistance to exploration to commitment, but people tend to get stuck in a phase or waffle back and forth. With a little practice, you can learn to identify where your people are and help them move forward one step at a time by asking some simple questions and listening attentively.

For example, let's say it has not been long since your downsizing, and you recognize behavior that indicates a worker may be experiencing denial. Your objective would be to help him/her move forward one step to the next phase - resistance/ bargaining.

To do this, you might ask questions such as:

- How do you feel about the way the lay-offs were handled?
- What do you believe could have been done differently?
- What would you like to see happen now?

If you are working with someone who shows signs of resistance/bargaining, your goal is to help them get to the exploration phase. To do this you may ask questions like:

- What kind of complaints are you hearing now?
- What is the most important step to take to improve our team/ departments?
- What other ways do you see to get the work done? How can I help you?

Famous humorist Ashleigh Brilliant, said, "If you think communication is all talk, you haven't been listening." Developing skills in really listening, without voicing your opinion or justifying a position, is a challenge for everyone. As problem solvers with extreme time pressures, we tend to focus on "fixing things." People's emotions impacted by rapid change cannot be fixed or managed. People usually just need encouragement and attention to heal on their own. As a leader, your goal is to create an atmosphere where that healing can begin.

Our experience has shown that the best placed people to help line employees to move forward on a day-to-day basis are often times not the professionals, but your own leadership team. However, it may be helpful to have an outsider teach your managers how and when to use these coaching-during -change skills.

10 Rules of Thumb

A union organizer with 30 year's experience said, "When non-union employees come to me to organize, they are asking for two things - security and recognition." Can you give people these things in our new world of work? In the traditional sense

LYONS HR

People • Process • Performance

- Staffing
- HR Outsourcing
- Direct Hire
- Technical Services



OUR MISSION

To enhance the BUSINESS performance of our clients by becoming partners in their SUCCESS.

www.lyonshr.com

probably not, but here are some creative suggestions that work in today's non-traditional workplace:

- Clarify Roles and Assign New Learning Responsibilities - During chaos, role clarity is critical. Make sure everyone knows where he or she stands. Provide cross-training and new training in cutting edge areas. Help your people feel secure in their marketable skills - this is where job security lies today.

- Lay New Communicator Pipelines - You've made a group announcement and you even sent a memo. You think you have communicated. The problem is people don't retain information well when under the stress of change. Constantly keep people updated on plans.

- Stay Visible to Your Team Members - Sometimes it feels better to stay in the office and avoid people - contact during change. Budget time to be on the floor with your team where the Resistor leaders are.

- Tell the Truth - Support the future benefits of the program, but be open with how you feel about the changes. You are the leader, not a super-hero. This change probably feels scary to you, too. Self-disclosure builds your credibility. People will follow a leader who is honest and real.

- Design a Clear Agenda - A good plan that you can probably follow tomorrow. Point your team toward real goals - focus on a "promised land."

- Spend Freely With "Soft Currency" - Invest time assessing and affirming peoples' strengths. Don't just dispense empty flattery, really look deeper and tell each individual privately what you appreciate about who they are. Also, invest in a skills assessment workshop for you and your people to rebuild their courage and confidence to face the coming changes.

- Don't Let the Best Ones Get Away - Re-recruit those talented people you must keep. When change hits, often the most talented leave first.

- Tighten discipline - Pay attention to process - how things go can be as important as what goes on.

- Take Care of Yourself First - How is your career doing? Is your business network strong? What about family/away time? How physically fit are you? How about faith/spiritual side of life? Pre-flight airlines' emergency instructions tell us to put the oxygen mask on ourselves, first, before assisting others with theirs. To lead others, you need to get a good breath of renewal first. Begin to focus on balancing your life and work. Some people find a personal coach/mentor helpful in keeping life and work in balance. Decide what works best for you and schedule it.

- Humor Yourself - "Laughter doeth good like a medicine," said King Solomon in the book of Proverbs. Studies continue to support the healing power of laughter. Work is serious business, but life is funny business - look for opportunities to show the lighter side of yourself and your people will respond in kind.

Conclusion

Lou Holtz, former head football coach for Notre Dame, said, "Teams are built one person at a time." To help get your company more productive, clearly define your organizational plans, increase training and use one-to-one coaching to help manager help workers adjust and get back on the team.

As an HR leader consider making a larger portion of your role to remind and provide simple tools to managers to help them see ways to lead with their heart and their head when leading the people who are left.

MICHAEL ALAN TATE (mike@hrmasap.com) is President of the Leadership Strategy Division of Human Resource Management, Inc. in Birmingham Alabama and is the author of Design a Life That Works, a book written for achievement-driven professionals who face a significant life or career transition. In 2009 he was awarded Fellow designation by the Institute of Career Management International, the highest accredited professional designation in the field of career management.



UNITED CONCORDIA[®] DENTAL

United Concordia Dental has provided dental benefits for more than 40 years. Our experience working with over 8.1 million members and 26,000 clients*—combined with our strong, national provider network and excellent client- and member-servicing capabilities—makes United Concordia a partner you can choose with confidence.

CONTACT:

DAVID BELROSE

Senior Sales Manager

David.Belrose@ucci.com • 1 (800) 554-6155, ext 13

ADV-0079 0312 • United Concordia dental FF5 products are underwritten by United Concordia Dental Corporation of Alabama. All products are not available in all jurisdictions. United Concordia Policies cover dental benefits only. For more information, visit www.UnitedConcordia.com.
*Statistics based on internal research & reports, 03/12.



Join Southeast Alabama's premier
Human Resources group, the
**Wiregrass Human Resource
Management Association!**

whrma.shrm.org whrma.shrm.org whrma.shrm.org whrma.shrm.org whrma.shrm.org

- Monthly Meetings
- HRCI Credits
- HR Networking
- Legal Roundtables
- Yearly Forum
- Community Involvement



Check out our website for membership information and join us TODAY!

whrma.shrm.org whrma.shrm.org whrma.shrm.org whrma.shrm.org whrma.shrm.org

Contact ClaraB@lbaproperties.com or lledward@ralcorp.com for more information



SHORT TERM FURNISHED APARTMENTS

OUR HOMES ARE A LOT LIKE YOURS.
1, 2 and 3 Bedrooms Available Now in THE Most Prominent Communities!

- All Utilities Included
- Wireless Internet
- Full-Size Kitchen
- Washer and Dryer

(800) 505-9001
View online at
www.theahigroup.com



FOLLOW US ON:





AHI Corporate Housing
SHORT-TERM FURNISHED APARTMENTS

Investigating & Responding to EEOC Charges

Getting It Right From The Start. A Practical Guide for Persuasively Presenting Your Company's Position

By Tammy L. Baker

Many of you have experienced, perhaps on multiple occasions, that special joy of receiving the envelope from the Equal Employment Opportunity Commission containing the charge that your organization has violated one, or more, or perhaps even all of the federal labor laws. The investigation that you must now undertake and content of the charge response document you send to the EEOC will provide the foundation for your defense, so it's critical that your response process is thorough and complete.

Here's an outline of the steps you should take in developing your position statement.

I. ANALYSIS OF CHARGE

The starting point for any investigation of an EEOC charge is the charge itself and close examination of the information contained in the charge.

A. Look for Technical Defects

If the charge was filed in Alabama, was the charge filed within 180 days of the conduct complained of? If not, the charge is untimely and that fact should be raised as a defense. (NOTE: In other states, a Charging Party has 300 days to file a charge.) Was the Charging Party a member of a protected group? Was the Charging Party actually injured or harmed in any way? If not, the Charging Party may lack standing to raise the issues alleged in the charge.

B. Listing of Issues

Does the charge allege discrimination based on race, sex, age, retaliation, etc.? Does it involve hiring, promotion, pay, discipline, discharge, etc.? Prepare a written list of the particular issues involved in the charge.

Also, identify potential questions. For example, if a charge complains of retaliation, has the Charging Party filed a previous charge or lawsuit? Has the Charging Party "opposed practices made unlawful by the act"? It may be that the Charging Party has complained about something, but that does not necessarily mean that the Charging Party has done something to protest unlawful discrimination or that the Charging Party's protest was brought to management's attention. Make notes about particular follow-up questions raised by the charge.

II. GET THE BASIC STORY

A. Documentation

1. Charging Party's Personnel File. This is the first information you should normally obtain. When you get it, go through it page by page and prepare a written chronology of events beginning with the date the Charging Party applied for work, the date hired, initial

job assignment, initial pay, any promotions or transfers or particular experiences, changes in supervisors, and other events down to the incident that resulted in the charge. Save this chronology because it will be invaluable in preparing the statement of position.

2. Company Policy in Issue. If applicable, always obtain a copy of the policy in issue and determine if policy was followed or if Charging Party violated the policy and appropriate discipline was taken.

3. Statements/Documentation. Sometimes a supervisor has prepared some type of investigation, made notes, and/or gotten statements from witnesses. You should always ask for this type information along with the personnel file.

4. Employee Roster. Always obtain a roster of the Charging Party's department by "complained of" category, i.e., race, sex, age, national origin, disability. This includes managers and supervisors.

5. Comparative Data.

(a) Direct. How has the company treated other similarly situated employees in similar circumstances? For example, if the issue is discharge, obtain a list of those employees within the relevant workforce or department who have been discharged in the past year, or the past six months, or the past two years. Normally, the list would be by employee name, race, sex, age, date of hire, date of termination, and reason for termination. You may want to look at the data over various time periods to be sure the numbers are accurately representative of the company. For example, if there happened to be a rash of eight straight discharges of female employees during a two month period, you might include more data than requested to show that concentration of female employees being discharged is an anomaly. This is merely putting your best foot forward.

(b) Indirect. The direct comparative data must always be focused against some background or indirect comparative data. For example, if 30 percent of those who have been discharged are black, you would need information about the percentage of black employment at the company or in the department. If the issue is hiring, the indirect comparative data would be applicant flow data or data you would get from the SMSA census data on minority representation in the area workforce from which the company does its hiring. Except for hiring charges, the indirect comparative data normally comes from an EEO-1 form. It is helpful to obtain an EEO-1 form in your initial investigation.

6. Analysis of EEOC Questionnaire. Most of the time you will receive an EEOC request for information. If so, look it over and see what information the EEOC has asked for. You may not need to give them everything they have asked for. Instead, the normal approach is to look at the charge itself and decide what information is

really relevant to the allegations of the charge. In doing so, however, you should always try to incorporate as much of the information that the EEOC has requested as is possible. One function that you perform is to shield or protect the company from overly burdensome EEOC information requests. At the same time, you want to be as cooperative as possible with the EEOC. You should consider what information the EEOC has requested in gathering your information.

B. “On-site” Investigation.

When you go on-site, i.e., to the branch or department involved, always have the actual decision maker(s) present for an interview. It is also a good idea to ask for a tour of the department where the Charging Party worked. Ask questions that will help bring out the full story. Make thorough notes about what is said. Your notes should indicate which of those present at the meeting made particular comments or observations or have information. Do not be afraid to ask those in the meeting to repeat what they said or to walk through the events very slowly so as to allow you to make notes. You will save them time in the long run if you get a thorough statement of what each person knows about the charge.

III. AFFIDAVITS OR NO AFFIDAVITS?

In some cases where there is a great dispute about what actually happened, it is best to take statements (declarations) from each individual. The best way to do this is to meet separately with each individual and listen carefully as they tell you the story. Ask follow-up questions. Listen carefully to their responses. To this point you have not taken notes but have concentrated on listening. Then, once you have some idea of their general testimony, ask them to walk back through it slowly while you write down what they say. Have them read what you have written and sign it on the spot, making any changes they feel are appropriate. You may want your counsel to review the statement before it is signed.

IV. PREPARING THE STATEMENT OF POSITION/ RESPONSE TO QUESTIONNAIRE

Once you have completed your investigation and gathered the necessary information, the following is a general approach to preparing a statement of position.

A. Background on Facility

Tell what the particular department in question does. It may also be appropriate to give some general statistical information about the EEO profile of the company or the department (e.g., if 40 percent of its employees are black vs. an area of labor force of 25 percent you might make a comment about how this fact is true and that the company is proud of its reputation for providing employment opportunities for minorities).

B. Background on the Charging Party

How long has the Charging Party been employed, what jobs have been held, has the Charging Party received promotions or other favorable recognition that indicate that the company was not biased

toward the Charging Party? If the Charging Party was a problem employee from the beginning, make that point. The Charging Party’s educational or employment history can be mentioned if those are relevant facts.

C. Chronology of Events Leading to the Dispute

You will basically follow the chronology of events that you prepared from the Charging Party’s personnel file, supplemented by additional information that you learned during the investigation. This is the “Grimm’s Fairy Tale” part of the statement of position. It begins with a “once upon a time” but seldom ends with a “happily ever after.”

D. Explanation of the Critical Events/Decision

At this point get more detailed with the chronology and go through exactly what happened that led to the decision. Identify the decision-makers. The law requires an employer to state a legitimate non-discriminatory (and/or non-retaliatory) good faith reason for any challenged employment decision. This is the place to state it. This section in the statement of position should conclude with a clear, concise statement of the reason for the employment decision. Please understand that this statement will be essentially the company’s defense from that point forward. Consequently, before you declare the reason, you need to have thought through possible attacks that can be made on that reason. You need to be confident that the company can stand by and defend that reason. If the story is inaccurate and/or a different version comes out in a deposition or on the witness stand, the Charging Party can claim pretext.

E. Company Policy

Outline the Company’s policy in issue. This may be a job posting policy, a sexual harassment policy, an attendance policy, etc.

F. Comparative Data

Here you present the statistical or other information that you have gathered. Hopefully, this information will support the company’s position as far as the stated reason for the decision.

G. Analysis/Argument

In this section you should state why the company feels that this charge lacks merit. Focus on any evidence that may have been included in previous sections showing that the stated reason for the employment decision is the true and actual reason. For example, if the same person hires an individual and within a short time after that decides not to promote the individual or to discharge them, there is an inference that the reason given by the decision-maker is not a pretext or cover-up for discrimination. It is logical that if you hire someone who is 58 and fire them six months later, age was most likely not a factor in the decision. Likewise, if you promote someone who is black and then six months later make a decision to discharge them, it is logical that their race was not a factor in the decision. Similarly, if the decision-makers were of the same race, sex, age, etc., as the Charging Party, that is a fact that tends to show lack of pretext. Make any points like this in the argument/analysis section. Point out all known reasons why the employment decision could not have been the result of any unlawful reasons. Also point out that the policy in question was followed and has been followed consis-

tently, incorporating the comparative fact data from above.
H. Outline the Exhibits and Other Materials That Are Attached to the Statement of Position

It is very important if the case goes to court or even later in the EEOC investigation to know exactly what information has been presented to the EEOC. One section of the letter or statement of position should state exactly what documents are being submitted (personnel file; workforce roster; personnel policy; termination notice(s) for similarly situated employees, etc.). By doing this, you can later reconstruct the EEOC file if someone else tears it apart.

I. Conclusion. The letter or statement of position should wrap up with a request for the charge to be dismissed.

V. MEDIATION

You should consider whether EEOC mediation would be beneficial. While mediation can be a useful tool, all charges do not need to be mediated. However, if after an investigation, there are troublesome facts, mediation should at least be considered. Even where the facts are not troubling, there may be other reasons to consider mediation, such as Charging Party is a current employee, there was poor communication surrounding an issue,

etc. Often, settling a case early in mediation can be much less expensive than defending an EEOC Charge and lawsuit.

VI. MISCELLANEOUS

Often times during an investigation other issues surface which may or may not be related to the charge. These could include such things as supervisors not following policy; wage disparities; wage-hour issues; sexual harassment issues; abrasive supervisors; employee morale or employee relations issues. While these may be “side” issues, they should not be ignored.

TAMMY L. BAKER, J.D. (bakert@jacksonlewis.com) is a Partner in the Birmingham office of Jackson Lewis LLP. Ms. Baker has experience in all aspects of workplace law, including multi-plaintiff and class action litigation. Ms. Baker lectures frequently on employment-related topics, including at national conferences sponsored by the Society for Human Resource Management (SHRM). In 2012 she was named a Leader in Her Field by Chambers USA, was named one of the “Top Attorneys in Alabama” and received recognition in the 2012 edition of The Best Lawyers in America. Ms. Baker obtained her law degree, magna cum laude, from the University of Alabama School of Law.



SAVE THE DATE

TUSCALOOSA HUMAN RESOURCE PROFESSIONALS
(A SHRM AFFILIATE)

2012 Leadership and Human Resource Workshop

Audience: Human Resource Professionals, Managers & Front-line Supervisors

Date: Thursday, August 9, 2012

Tentative Time: 7:30 am – 3:00 pm

Location: Shelton State Community College,
9500 Old Greensboro Road, Tuscaloosa, AL 35405

*Discount Available for Organizations with 5 or more attendees
HRCI Credit Pending*

THRP website: thrp.shrm.org

*Registration available on THRP website beginning
in late May/early June 2012*



What's Missing From Your HR Toolkit?

As an HR Professional, you're charged with finding qualified candidates, ensuring they receive the training they need, and then managing their payroll and benefit tasks for the entire employee lifecycle – all in the most cost effective way possible.

McGinnis & Associates delivers HRMS solutions that provide the tools smart businesses need, including:

- **Recruiting, candidate tracking, onboarding, and training** functionality
- **Employee Self Service** to equip employees to answer their own questions
- Automated form handling and approvals with **tailorable HR workflow**
- Freedom of choice - **in house or web-based payroll processing**

It's time to **maximize your department's resources** and **drive efficiency**. We have the tools you need.

McGinnis & Associates. Human Resources, Payroll, and Business Management Solutions for Smart Business. Learn more at www.mcgnow.com or by calling (866) 341-5001 ext. 3005.



CAPELL & HOWARD P.C. ATTORNEYS AT LAW

Employment & Labor Relations

Capell & Howard, P.C. provides assistance with creating and improving employment policies, drafting handbooks and manuals, drug & alcohol testing policies, non-compete agreements, achieving compliance with various state and federal employment laws, and defending clients against charges, claims, and suits by employees. The Firm also offers a wide range of services to management, including preventing and resisting union organization, immigration compliance work site reviews, Human Resources training and counseling on effective and defensible terminations, handling contract negotiations and arbitration, and representing employers before the National Labor Relations Board and in the courts.

Montgomery Office

150 South Perry Street (36104)
Post Office Box 2069
Montgomery, Alabama
36102-2069

Telephone: (334) 241-8000
Facsimile: (334) 323-8888

www.capellhoward.com

Bruce J. Downey, III
bjd@chlaw.com
(334) 241-8060

Christopher W. Weller
cww@chlaw.com
(334) 241-8066

Terrie S. Biggs
tsb@chlaw.com
(334) 241-8091

Henry C. Barnett
hcb@chlaw.com
(334) 241-8059

Barbara J. Wells
bjw@chlaw.com
(334) 241-8016

Patricia R. Osuch
pro@chalw.com
(334) 241-8021

Opelika/Auburn Office

Skyway Professional Center
3120 Frederick Road
Suite B (36801)
Post Office Drawer 2268
Opelika, Alabama 36803

Telephone: (334) 501-1540
Facsimile: (334) 501-4512

Thomas M. Eden, III
tme@chlaw.com
(334) 241-8030

Twenty-One Reasons

Why Obvious People Problems Don't Get Addressed

By John Faure, SPHR

Please, Can't Something Be Done?

HR professionals serve an important role when managers seek help with their employee performance or conduct problems. But what about those situations where there's a significant employee problem that you and others are aware of, but the manager of the problem person is apparently not doing anything to address the issue and hasn't come to you for help?

The perception that a serious performance or conduct problem is unaddressed by management can seriously dampen an organization's morale and productivity. What can the HR person do? Well, understanding the root cause of the problem is the first step. Let's first look at some of the most common underlying issues that might keep a manager from taking action to address a significant employee problem:

1. Problem? What problem? How could the manager not see what's obvious to everyone else? Well, it happens. He may not even recognize it when it's pointed out to him. This could be one of those managers who live in a carefully-constructed artificial world where things are as they wish them to be, not as they are to the rest of the world, and any suggestion to the contrary represents an inconvenient truth to be cast aside. Of course, an unrecognized problem is probably not going to get fixed anytime soon.

2. Low standards. Perhaps the employee is actually fully meeting the manager's standards, which are very low.

3. Misplaced loyalty. The manager may feel that the employee has been "loyal" to the organization - and maybe also to her personally - and so it would be wrong to violate that loyalty by addressing a performance problem.

4. Fear of confrontation. Even good managers can be conflict-avoidant, so they may dodge or mishandle tough conversations. The manager may actually know what needs to be said to the employee and the organization is supportive of her addressing the problem, but she may be reluctant to initiate a conversation.

5. Organizational culture barriers. The organization's culture may be the problem. It could be that in this company managers just don't admit mistakes. Or, a culture of weak or nonexistent accountability may relieve both the manager and employee from feeling responsible for the problem - the manager may not even recognize his responsibility to actually do something. Perhaps the employee is a very senior employee and the company's policy (unwritten, of course) is that those folks are "untouchable". If the boss and the employee are both senior employees and of the same age, the manager may be uncomfortable with the idea of managing a "peer". Organizational politics may be a factor here as well.

6. Why go to the trouble? The manager may be willing to address the problem but she might be held back, either tacitly or explicitly, by her superiors, who for some reason don't want the employee held accountable. Or the boss might believe that after receiving corrective action, the employee will go over her head and complain to senior management, who might side with the employee. The manager may know, or think, that her bosses won't stand up to the employee.

7. Fear of consequences. Maybe the manager can't take the risk of making the employee unhappy by confronting her performance issues. Perhaps the employee has a powerful sponsor or constituency within or outside of the organization who could damage the boss in some way. The employee may have unique institutional knowledge, a rare and useful technical skill, or a not-generally-known close relationship with someone important that the boss doesn't want to put at risk.

8. Excuses and rationalization. The boss may be one of those managers who, when confronted with clear evidence of an employee's incompetence, says something like "Oh, that's just his way" or "He's always been like that." in an attempt to diminish or dismiss the problem.

9. Perception of weakness. If the manager hired the employee, promoted her to her current position or is her sponsor or advocate, he may not be want to constructively admit that he made a mistake by even acknowledging a performance problem to his boss, much less addressing it. Indeed, the boss may work to actively conceal the employee's incompetence from his higher-ups to avoid his own competence being called into question.

10. Don't know how. The manager may see the problem, know she needs to do something to address it, but just not know how to go about it. Or, perhaps she's reluctant to ask her higher-ups for help because she doesn't think they will be of any help and she doesn't know where else to turn for assistance.

11. Just don't care. For whatever reason, the manager may just not care enough about the employee's performance to do anything to improve it. He may have far more serious or urgent problems to deal with.

12. Too close. Managers have a duty to make objective, unbiased decisions regarding their subordinates. If the boss's relationship with the employee is more personal than professional, she may tune out any negatives and her ability to truly manage the employee is compromised. It's a problem if the boss and subordinate are neighbors, hunt together for a week

every fall or lunch together most every day.

13. HR is the problem! In some organizations, HR (sometimes in collusion with an in-house or outside attorney) is actually a significant barrier to real performance management as opposed to actually helping managers. This happens when HR exhibits one or more bad practices, such as taking an adversarial rather than supportive and consultative approach with the manager; requiring excessive documentation and voluminous "proof" of poor performance; being unresponsive; wasting time in unnecessary meetings; starting from "no" on every discussion; being "officious"; not thinking beyond the letter of the rule or policy; not offering usable solutions and alternatives and just generally being difficult to deal with.

14. Employee/public relations. Maybe the employee is a long time, well liked (if not well-respected) employee whose departure, if it came to that, might create a perception among employees that the company is, shall we say, rather "heartless". If this person is a local elected official, well-respected minister, officer of a prominent non-profit or in some other high-profile community role, an employment termination could reflect negatively on the organization.

15. Everybody could be wrong. The HR person and everyone else could be unaware that the manager is diligently addressing the problem because, as should be expected of a professional manager, he doesn't speak inappropriately of his counseling conversations with the employee.

16. Discrimination. If the employee is a member of a legally-protected class and the manager isn't, the boss may be reluctant to manage the employee for fear of the consequences of being on the receiving end of a discrimination, harassment or retaliation allegation. Perhaps the manager has seen other managers' careers damaged in similar situations, even when they were in the right, and would rather suffer the employee's poor performance or bad conduct than risk being damaged by taking action. Perhaps the employee has previously exercised the "best-defense-is-a-good-offense" defense by filing a discrimination or harassment claim (at this point the issue of whether that allegation had any merit is irrelevant), and the company attorney, fearing a retaliation charge, has ordered the manager to give the employee a free pass.

17. Compromised. The manager may be blocked from taking action on the subordinate because that person has some sort of leverage over the manager. The employee might have knowledge of a serious problem, ethical issue or other issue concerning the boss which that person's superiors are

unaware of - and the boss would strongly prefer to keep it that way. (since nowadays cameras are ubiquitous, there really may actually be compromising pictures.)

18. Bad is better than nothing. The manager may be painfully aware of the subordinate's shortcomings and be willing to address them and ultimately terminate if need be. The boss may also be aware that the organization won't let her replace the employee or even hire a temp, so she takes no action, figuring that an incompetent employee is better than an empty cubicle. Or, the manager might think that she won't be able to find a recruitable candidate for the measly salary she's paying the employee.

19. Sympathy. Maybe the boss knows that the employee is suffering from serious personal problems – financial, marital, medical, legal, or family – and doesn't want to add to the list of woes.

20. Asymmetrical performer. Perhaps this is one of those employees who have great technical, process or analytical skills, delivers quality product on-time, every time and is adept at managing up, but at the same time is known to cut corners, wink at the rules, mistreat people and generally leave a bloody trail of collateral damage in his wake. His manager may value the strengths and just accept the negatives as “the cost of doing business”.

21. Just too busy. These days managers are more overworked than ever, and addressing a significant employee issue can be just one more project on the manager's 47-item “I've just GOT to find time to get to this!” list - unless something happens to force it to the “current crisis” list.

Some of the above scenarios sure seem to be prospects for the “mission impossible” stamp. And, to further complicate things, a situation may have elements of several of these scenarios intertwined in a big knot. The solutions will be unique to the people and the organization, and likely won't be found in any HR textbook or certification program. This is advanced HR work, not for the faint of heart, and it's entirely possible that the situation can't be changed, or even addressed, at least in the short run.

So, how can the HR professional be positioned and equipped to address such thorny problems?

Here are a few thoughts:

- Trust, respect and credibility. The HR professional must have earned the respect and trust of the management team to be positioned to have any impact on a challenging employee issue. Without credibility, the HR person won't even get in the conversation.

- Relationships. Developing and maintaining a good relationship with the management team is fundamental to getting anything done in an organization. If the underlying issue is within the boss' ability to address, the HR professional can lever-

age a solid consultative client relationship to figure out how to approach the manager about the problem and help fix it.

- Organizational knowledge. Having a deep understanding of the organization's people and culture is foundational for taking action on a tough problem like this one. Knowing the “real”, informal organization and who the real players are is essential as it may be that the root cause of the problem lies above the manager's level, or elsewhere.

- Be plugged in. Good HR professionals develop a pretty good idea of what's going on just by keeping their ears open and having discreet conversations with people knowledgeable of the this particular manager/employee relationship. This is where being “plugged-in” to the history and realities of the organization can pay off.

- Don't make it worse. Care should be taken to heed the physician's maxim of “first, do no harm” and ensure that HR is not the problem and, assuming it isn't, then not to take any action that could actually make matters worse.

- You are not alone. Before classifying the situation as unsolvable, the attending HR professional might consider selectively seeking the advice of wise colleagues, both inside the organization and perhaps even outside. Somebody else may have a different perspective, or an idea that hasn't yet been considered.

Long-running, obvious, unaddressed HR problems are all too common in organizations, and solutions may be elusive. A well-positioned, organizationally-savvy HR professional can take steps to understand the issue, initiate a conversation with the appropriate manager, determine if the situation can be addressed, and, if it can, start the ball rolling on a solution.

Is it Performance or Conduct?

When working with a manager to diagnose an employee problem, it may be helpful to distinguish between “performance” and “conduct”, or behavioral issues. Generally, performance would refer to the quality or quantity of an employee's work product, while the terms “conduct” or “behavioral” usually refer to how the employee behaved while performing the work. Technical know-how, error rate and customer service would generally be performance issues while initiative, attendance, teamwork, cooperation, ethics and demeanor would typically be considered conduct or behavioral issues. Performance and behavioral issues can be fairly distinct, or may blur together, and usually require different diagnostic methodology and solutions.

JOHN FAURE, SPHR (Faure@Bellsouth.net) is Director Human Resources with MailSouth, Inc., has more than 20 years multi-industry HR experience and serves as Chairperson of the Birmingham Society for Human Resource Management's Advisory Council.





BE SMART. BE A CONTINGENCY PLANNER.

BE BY THE BOOK. BE DETAIL ORIENTED. BE A TRAINER.

BE AN OBSERVER. BE AN EMERGENCY PLANNER.

BE STANDARDIZED. BE CAUTIOUS. BE SOUND. BE STERN.

BE CARING. BE THOUGHT OUT. BE HEALTHY.

BE A PROTECTOR. BE METHODICAL. BE SUPPORTIVE.

BE CONSERVATIVE. BE MINDFUL. BE DOUBLE SURE.

BE SAFETY FIRST. BE ACCIDENT FREE. BE DILIGENT.

BE METICULOUS. BE COMPLIANT. BE THE STANDARD.

BE A SAFETY CHAMPION.

BE SECURE



**BlueCross BlueShield
of Alabama**

An Independent Licensee of the
Blue Cross and Blue Shield Association

When your health is protected, you can focus on being you.
Share your story at bcbsal.com/BEYOU

Self-Sabotage: The Top 7 Employer Mistakes

That Will Ensure An Employee's Success In Litigation

By Katherine E. Reeves

With the ever growing number of employment-related claims, employers should be cautious of common oversights that may ensure an employee's success in litigation. These 7 mistakes are easily preventable with a little bit of foresight and planning, and may head off an employee's claim before he or she files suit.

Mistake 1: The Lake Wobegon Performance Review

Those old enough to remember the infamous radio program – A Prairie Home Companion – will recall the fictional Minnesota town of Lake Wobegon, “where all the women are strong, all the men are good-looking, and all the children are above average.” HR professionals and employment attorneys commonly refer to the natural tendency to overestimate one's ability, achievement, and performance as the “Lake Wobegon Effect.”

Too often, managers view performance evaluations as another task on their already overflowing to do list. Other

times, employers want to avoid hurting their employees' feelings or stirring up conflict. The result – a performance review that rates a poor performer as an above-average employee on paper. While it may sound harmless, an overly benign performance review can prove to be a fatal mistake should employment-related litigation arise.

Failing to clearly set forth performance standards and inform employees whether they are meeting those standards is a sure fire way to not only invite claims of discrimination, but also to ensure a plaintiff-employee's success in litigation. Lake Wobegon performance reviews give an employee strong evidence to argue that the employer's legitimate, non-discriminatory reason for termination (i.e, poor performance), is mere pretext for unlawful discrimination. Providing consistent, honest, and clear performance evaluations will encourage improvement and protect the employer should it need to issue discipline and/or terminate an employee down the line.

Mistake 2: The Half-Baked EEOC Response

Many employers do not consider on the front end of litigation, that their response to an employee's EEOC charge (including supporting evidence) will be provided to the employee following its investigation (assuming the employee submits a FOIA or Section 83 request). What does this mean for their defense? Almost everything submitted to the EEOC is free discovery for the employee, if and when he or she files suit. A half-baked position statement can limit or forfeit certain defenses. Keep in mind that EEOC investigations should not be taken lightly. If

a for-cause determination is issued by the EEOC, it may, in the judge's discretion, be admitted as evidence at trial.

Employers should be cautious in determining what information is submitted to the EEOC through responses or supporting documentation, because they may be committing themselves to facts or legal theories before discovery has even begun. Generally, the less is more approach is the safest route in responding to EEOC charges. However, prior to responding to a charge of discrimination, it is important to formulate a strategy and ensure that your position statement is well written. A poorly drafted response can greatly hinder your ability to defend in subsequent litigation.

Mistake 3: The Little White Lie

The vast majority of employment-related litigation arises out of employee terminations. In fact, in the past five years, the number charges filed with the EEOC has risen by more than 30%, and the vast majority of those charges are termination-related. These claims are often filed by employees who received contradictory reasons for their discharge.

The biggest “no-no” an employer can make at termination time is providing an employee with a less than truthful reason for their discharge. It may seem like common sense, but employers continue to make this mistake for the same reasons they provide Lake Wobegon performance reviews – the desire to spare feelings. The result, a confused and disgruntled employee who brings suit on the grounds that the reason offered for his termination was mere pretext for discrimination and/or retaliation. This most commonly occurs when an employer informs its employee that he is being “laid off,” when, in fact, he is being terminated for poor performance. Later, the former employee finds out his job has been reposted as vacant. By avoiding the hard truth, the employer has now raised suspicion about its motives and given the employee the evidence he needs to establish pretext. That evidence of pretext will likely defeat the employer's chance of prevailing on summary judgment.

When providing a reason for termination, be honest and direct. This is not the time to spare feelings or avoid conflict. If the termination is discipline-related or performance-based, say so. Consider communicating the reason for the termination in broad terms so that you are not later limited to the facts available for your defense should the employee file suit (this rule also applies to EEOC position statements). All

termination related documentation should line up with the grounds for termination that were verbalized to the employee. Documents that contradict the reason for termination that was communicated to the employee are likely to be used as evidence of pretext.

Mistake 4: Failing to Preserve Documents – The \$2.75 Million Mistake

Employers have an obligation to preserve documents and electronically stored information (“ESI”) that relate to an employee's pending or reasonably foreseeable suit. Loss or destruction of documents, even if inadvertent, can have serious consequences on an employer's defense and may result in sanctions.

As a recent example, consider the \$2.75 million sanction that tobacco giant Phillip Morris was ordered to pay after it inadvertently deleted email messages relevant to a pending suit. The email destruction was the result of an auto-delete feature that Phillip Morris had failed to disable, despite a court ordered preservation directive instructing the parties to retain all relevant email communication. Phillip Morris was also precluded from offering testimony from any fact witnesses at trial that failed to preserve relevant documents. The Phillip Morris case, although extreme, serves as a cautionary tale of the consequences of spoliation of evidence. In addition to monetary fines, some courts have precluded the use of certain defenses and allowed jurors to draw adverse inferences from the absence of destroyed documents.

To prevent this issue from arising, employers should issue litigation holds or document preservation directives when they reasonably anticipate litigation may arise. This will vary on a case by case basis, but most often occurs when a charge of discrimination is filed or legal action is threatened. What documents to retain will vary depending on the basis of the claim. Generally, an employer must preserve documents and ESI that it knows or should reasonably know are relevant to the employee's claim or may lead to the discovery of admissible evidence. In the employment context, this usually includes the plaintiff's personnel file, payroll, discipline records, and email-account; in addition to email and correspondence exchanged between the plaintiff's supervisors and other key decision-makers. If the claim may also involve a comparator, then relevant information should be preserved

for all individuals who held the same job title or position as the plaintiff or were subject to the same type of adverse action. This list is not exhaustive, and employers should contact legal counsel for assistance in developing and applying a litigation hold.

Mistake 5: No Good Deed Goes Unpunished

One of the most fruitful arguments for employees in discrimination claims is inconsistent application and enforcement of policies. Making exceptions to the rules, despite your best intentions, may come back to haunt you.

This scenario most often occurs when a manager makes an exception for Employee A, motivated by sympathy for his or her personal circumstances or the company's desperate need for Employee A's services at the time. A problem does not arise until later, when the same consideration is not extended to Employee B – who happens to be a member of a protected class. The well-intentioned manager has now given Employee B all of the ammunition he needs to cry “discrimination,” and to establish a comparator in his subsequent charge or suit.

Inconsistent enforcement can be just as harmful. Consider, for example, a manager that fails to enforce an attendance policy against Employee A, who is habitually late. Nine months go by and the manager has had enough of Employee A's tardiness. The manager now decides enforce the policy. To the manager's dismay, the Employee A now claims that his tardiness is related to depression, cancer, or some other potential disability. Suddenly, the manager is faced with an ADA claim.

Unfortunately, inconsistent application or enforcement of policies can be circumstantial evidence of discrimination which may give rise to a triable issue of fact and defeat an employer's chance at prevailing on summary judgment.

To avoid this mistake, consistency is the key. All management level employees should be trained in the proper methods for interpreting and applying workplace policies. Managers should be proactive in enforcing policies instead of waiting until an employee becomes a habitual offender to enforce them. Potential exceptions to the rule should be reported to HR or legal counsel for final approval. You may also want to consider keeping a record of all exceptions that are made, including the circumstances surrounding each. This will allow you to differentiate the decision made in

Employee A's case from that of Employee B, and demonstrate that the decision-maker's discretion was not directed by any discriminatory intent.

If in doubt, keep in mind - “No good deed goes unpunished.”

Mistake 6: Undocumented Discipline

A well-documented history of warranted disciplinary action is typically an employer's best defense against a claim of discrimination. However, some employers fail take prompt disciplinary action, and even more forget to document their efforts. Instead, many wait until a disciplinary problem is chronic enough that it warrants termination. Later, when called upon to defend a discrimination suit, the employer is left empty handed when trying to back-up its decision.

The cure for this problem is simple . . . write it down. All performance and disciplinary problems should be documented – even oral warnings or counseling. Allowing an employee to review and sign disciplinary and/or performance records will acknowledge receipt and prevent the employee from later disputing that disciplinary action was taken. Employers should also consider offering a space within the document where the employee can contest the discipline and explain his or her “side of the story.” The employee's decision not to contest the discipline when presented with the opportunity to do so, may arguably serve as an admission, or at least support the employer's allegation that the employee committed the alleged infraction.

Mistake 7: The Superficial Investigation

The resources and methods that an employer uses to conduct investigations into internal complaints of discrimination and harassment can have a serious impact on its chance of success in subsequent litigation. If conducted properly, investigations may even prevent litigation.

One of the most common mistakes employers make is not taking an employee complaint seriously because the employee is disgruntled, a constant troublemaker, or has a history of lodging frivolous complaints. While it may be tempting to short cut an investigation or skip it altogether, keep in mind that if that employee decides to file suit - which disgruntled employees tend to do - then you will be left to explain why you wrote off the employee's complaint.

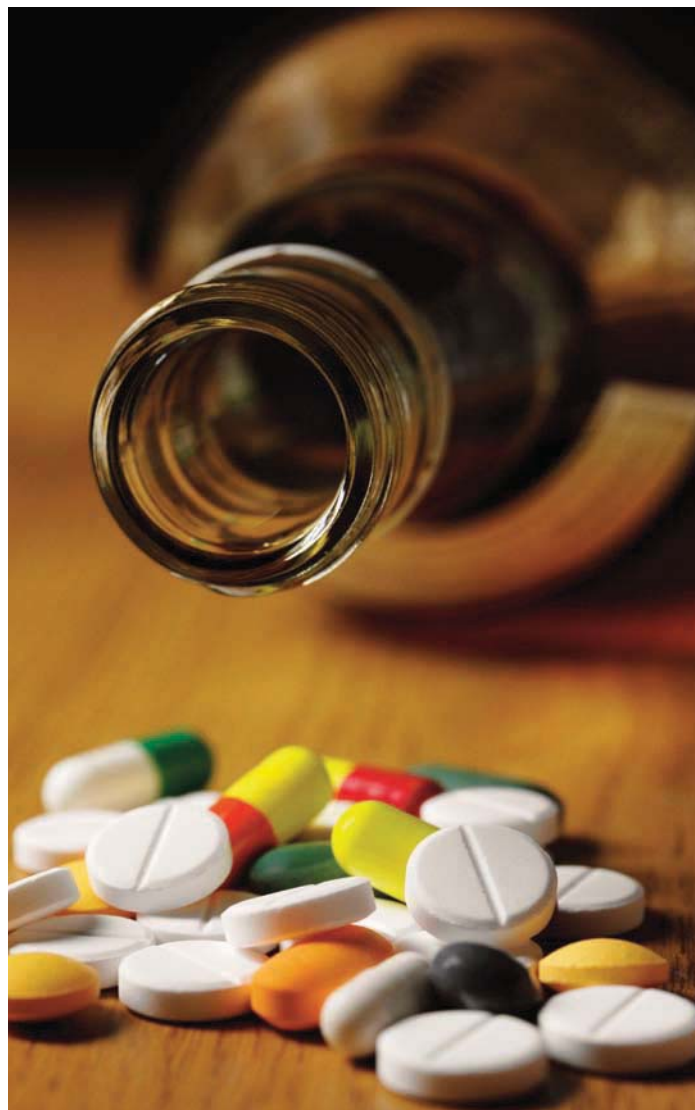
This is not likely to evoke sympathy for the employer in the heart of an EEOC investigator, judge, or jury.

Along the same lines, employers should be leery of the employee who voices a “concern,” but insists that it is “not a big deal” and that nothing needs to be done about it. This includes situations in which an employee refuses to submit a statement in writing or participate in the investigation. “Concerns” over discrimination or harassment of any kind generally warrant investigation. The employer has an obligation to conduct an investigation when it knows or has reason to know that an employee is being subjected to discrimination or harassment. If the reporting employee does not want to cooperate or back tracks on his or her prior complaint, make note and continue with the investigation.

Another investigative-blunder is the decision to only interview the complainant and the alleged offender. Not interviewing third party witnesses with knowledge of the relevant events greatly limits the scope of the investigation and its integrity. The list of third party witnesses should not only include eye witnesses, but also any employees to whom the complainant voiced his or her complaints of discrimination or harassment. Third party witnesses are crucial in assisting the investigator in making credibility determinations.

Finally, to harp on proper documentation one more time, the biggest mistake an employer can make in conducting its investigation is failing to document its efforts. Witness interviews and all actions taken during the investigation should be well documented. The investigator should prepare a final report addressing any credibility issues and summarizing the final determination, including any resulting disciplinary action. Note, however, that adequate documentation does not mean that the employer should demand that all witnesses provide written statements. Written witness statements are obviously preferable, but may not be practical in all circumstances. Consider interviewing witnesses to secure honest and candid information, and then asking that witness to put his or her knowledge in writing.

KATHERINE REEVES (Katherine.Reeves@ogletreedeakins.com) is an associate in Ogletree Deakins’ Birmingham, Alabama office. She focuses her practice on employment litigation including the defense of Title VII, FMLA, FLSA, ADA, ADEA, USERRA, and § 1981 claims.



IT IS YOUR BUSINESS.

Employees with a drinking or drug problem put others at risk. Their performance suffers. They can negatively impact your entire business. And they need help. Make it your business to get involved by referring them to Bradford for a free consultation. If admitted for treatment – with a signed release of information – we’ll give you progress reports at every stage of their care. Let Bradford’s proven treatment work for you.



1-800-333-1865 | bradfordhealth.com

Who's Responsible For Training Your Employees on Social Media Ethics?

By Andrea Walker

More employees are spending countless hours on social networks during office hours. But, what could be more troubling to companies is how their employees are conducting themselves online.

A study published by the nonprofit Ethics Resource Center (ERC) found workers spent more than 30 percent of the workday participating on social networking sites. In addition, 42 percent of active social networkers said they felt it was acceptable to blog or tweet negatively about their company or their coworkers, while just six percent of non-active social networkers saw such behavior as OK. Although, a majority of active social networkers (56 percent) said they would also be likely to post about good things their coworkers did.

A corporate crisis isn't just an external communication breakdown but also an internal issue that can cause considerable risk to the company's reputation and employee morale. With social networking showing no signs of going away, big companies will have to find a way to deal with the ethical changes that come along with it.

The Risks

One risk businesses face when it comes to social media is the sharing of information. Either employees can share opinions in ways that reflect badly on the company or they can release confidential information such as intellectual property. Confidential information being leaked, data

breaches, privacy violations, offensive tweets – all of these possibilities make organizations hesitant to adopt social media.

However, not engaging in social media can become a risk in itself. Most every company and brand is being discussed through online social channels. It is important that the company provides its voice in these discussions and conversations.

Best Practices

Since social media is becoming a standard practice for many businesses or at the very least a good way to interact with customers and partners, it is important for employees to understand the best practices for engagement with particular emphasis on ethics and legal responsibilities. Having a good company policy on social media with an active governance plan is no longer optional. It is essential to mitigating corporate crisis communication risks.

You also need to work with your company's legal and human resources team to understand current social networking workplace laws and procedures. According to a recent ruling of National Labor Relations Board, employees can write anything they want about your company on their own Facebook profiles in off hours, so anything limiting that usage in your acceptable use policy should be changed. Your IT and legal departments should revisit acceptable use policies once every few months or after major decisions to ensure that they are still current, and employees should be made to sign the updated copies.

A decent workplace social media/Internet acceptable use policy should do a few things well. It should bind the employee to using the Internet specifically for work purposes

during work hours in the office, and ensure that any electronic forms of communication aren't used to disseminate confidential information about the company. Overall, to avoid risks related to online employee crisis communications, companies must train, educate and create protocol to address our society's ever-evolving communication channels.

Below are four essential questions your company's guidelines should answer for employees...

1. Who is speaking on behalf of the company? Similar to traditional media, your company needs to designate an online community manager responsible for monitoring your company's reputation, update your internal and external social networks and be the filter for which company content is distributed. They should work in tandem with both the corporate communications and HR department. If your company has more than one online community manager, create a management dashboard to assign tasks, schedule content updates and notify team members.

2. What kind of information should employees NEVER share? It's much easier for HR departments to figure out what company information or news is considered confidential and for internal use only.

3. What online behavior isn't tolerated? Employees are part of your company's overall brand image so it's important to convey to them what isn't acceptable online behavior that could damage the company's public image. Some examples of potentially damaging behavior is engaging in online arguments with customers or other companies, posting nude or degrading photos of themselves that casts them in a very unprofessional manner or posting comments containing profane language as a representative of the company.


4. How does the company address online personal opinions about company? HR Departments need to be careful with disclaimers and understand current laws regarding online freedom of speech. This guideline may take a few revisions to flesh out but also take into consideration that employees may balk at the idea of not being able to express themselves on their personal social networks.

ANDREA WALKER (awalker@prview.com) is a Senior Project Manager/Digital Strategist at Panorama Public Relations, a leading Crisis Communication firm located in Birmingham, Alabama.




EAST ALABAMA SOCIETY
FOR HUMAN RESOURCE MANAGEMENT
(EASHRM)

Whether you are new to the HR field or have many years of experience, we are a local starting point for networking, information, professional development and continued support of excellence in Human Resources. Become a member by contacting us today at eashrm.shrm.org or email us at eashrm@gmail.com



TVC-SHRM
TENNESSEE VALLEY CHAPTER OF SHRM - ALABAMA

TVC-SHRM, along with 14 other chapters in the state of Alabama, are part of SHRM Alabama State Council, Inc. www.shrmalabama.org, serving together to support the mission of SHRM: Serve the Professional and Advance the Profession.

We are a not-for-profit professional organization for Human Resource practitioners in and around the Decatur area. Founded in 1971, the organization serves its membership by providing professional development opportunities and information relevant to the ever changing environment of human resource management. We include individuals who are full-time HR professionals and other individuals who have HR responsibilities as an integral part of their job. We serve the community through public service activities and support in the areas of education and workforce development.



SHRM
Shoals Chapter

www.shoalschaptershrm.shrm.org

Come join us at our **Annual Conference!**

- June 13th in Florence, AL
- **HR as a Strategic Partner**
- \$99 for all SHRM members (\$119 non-member)
- Registration: mmfike@una.edu
- Sponsorship: matt.oglesby@cbsbank.net

LEGAL ADVANTAGE
HUMAN RESOURCES SOLUTIONS, LLC

An Employment Law Firm Providing a Legal Foundation for Human Resources Compliance

Employment Law Representation & Advising
Human Resources Law Advising
Employment Law Compliance
Employee & Management Training

Nancy Washington Vaughn, Esq
www.legaladvantagehrsolutions.com • 256-289-9782

Licensed to practice law in Alabama, Georgia, Tennessee and Washington, DC
No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.

How to Unionize Your Workforce *As If You Asked*

By Richard I. Lehr, David J. Middlebrooks, Matthew W. Stiles

Of course, you don't really want to unionize your workforce, do you? But from small businesses to Fortune 500s so many employers—by their own conduct—are playing right into the hands of today's increasingly more sophisticated union organizers. Think your workplace culture is union-proof? Take a closer look at the signals, often subliminal, you're sending to your employees and re-evaluate your opinion. You may not want a union to organize your employees, but it's usually an employer's own actions that invite union organizing.

Before we look at those telltale signs that you're asking for union trouble, let's look at a few facts. Although union membership is a stagnant 6.9 percent of all private sector employees, we can't say with a straight face that unions are in decline. Sure, some unions are in decline. But many of them (like the SEIU, UFCW and AFSCME) are more appealing to employees now than ever, particularly in service sector jobs. Also, seismic changes at the NLRB, including changes to Board procedures and law, have invigorated unions nationwide. Combine these trends with the persistent uncertainty of our employees and it's fertile ground for union growth. Employees are already burdened by increasing energy costs (which have the effect of a net pay cut), concerns about affordability of health care, and worry that doing a good job today is no longer a guarantee of being allowed to continue working tomorrow. These issues, complex as they are, serve to heighten potential employee interest in unions. Based on the union organizing activity we've fought against during the past 18 months (and don't worry, we won't name any client names here) from border-to-border and coast-to-coast, the following are the telltale signs that your workplace has rolled out the welcome mat for an eager union organizer:

- **You Ignore Inequities in Employee Pay**

Historically, union organizing hasn't started simply because an employer has a bunch of crummy pay disparities. But having outdated, inconsiderate, or inequitable pay has certainly proven to be a deciding factor in union

organizing success. Every union organizer is going to tell his target recruit that the union will get him better pay and benefits. Most of the time employees see that for the sales puffery that it is. But ultimately, every employee targeted by a union organizer is likely to ask himself the critical question: Do I really think I might come out ahead with a union? If you've ignored your compensation system (and many employers have, particularly during the Great Recession), be very, very afraid of how the employee answers that question.

Employers simply cannot underestimate what an important issue pay is in today's workplace. For example, we defended a union organizing campaign recently where market demands for certain service sector jobs led an employer to start new hires at higher pay than it paid some current employees. It didn't take long for current employees to learn of it. They complained about the disparity, but the employer didn't act swiftly to correct it. As a result, an inadvertent but unresolved pay disparity became the galvanizing issue for employees who signed union authorization cards, thinking the union was the answer. Now ultimately, employees voted against joining a union because the employer was able to correct the disparity prior to the union vote. But that's one employer who wishes it had listened and acted on employee pay issues without having to fight a union organizing campaign at the same time.

Employers frequently examine pay as part of their overall wage and hour compliance efforts. However, employee pay isn't just about compliance. Pay has much larger implications on employee relations. Your employees are going to discuss pay even if you've instructed them not to. Channel that discussion to someone who will listen and have the resources (or authority) to act. But don't just wait for your employees to voice a compensation complaint. Be proactive. Take a step back, examine your compensation system preemptively, and consider the employee relations implications of your organization's pay structure. If it's not objectively defensible, it's time to fix it.

• You Choose Your Supervisors without Regard for Their Communication and Listening Skills

Supervisor communication and listening skills are fundamental, but we've lost count of how many union organizing campaigns started because of a supervisor who exceeded production targets and yet failed miserably at every aspect of human relationships. We're not saying your supervisors need to have Oprah Winfrey's grasp on the human condition. But if they're going to be the primary point of contact between a team of subordinates and the rest of your organization, they've got to be able to listen, empathize, communicate, and act on

employee concerns. Yes, promotion from within is important, but not when you promote a supervisor based on one set of skills that has very little, if anything, to do with the skills necessary to become an effective supervisor. Remember that doing one job well does not necessarily qualify an individual for another.

So often we hear employers talk of "breaking in" a supervisor with on-the-job training. That's fine; but if you break in supervisors on the job, expect to have a lot of "cleaning up" to do. Before you get out that mop bucket, try breaking in your supervisor with a trial period or even a mini-project. Assign a small team of subordinates to work under your prospective supervisor on a temporary basis. You don't have to cook up your own Trump-like apprentice program, but when the project is over, in almost Trump-like fashion, evaluate the prospective supervisor's performance in all facets of the job, including those at least equally important relationship skills.

• You Project Elitism

Yep, it's super cool that you've got the big office, the leather chair, the front row parking space and all that, but don't treat it like the curtain in the first class cabin. Employees understand and respect that others in the company earn more, whether they're managers, executives or owners. Still, no employee likes to be persistently reminded of these differences. Leave class warfare to the politicians and keep it out of our workplaces. It's important for management to be visible, accessible, and engaged with employees throughout the full range of his supervision. But use this visibility to send positive signals and clear messages. For example, subordinates don't really want to hear about your annual trip to the Caribbean, your vacation place in Aspen, or the newest addition to your yacht fleet. Similarly, driving a new luxury vehicle at a time when wages and benefits are frozen doesn't send the message that "we're all in this together."

Perhaps the greatest attribute of leadership is humility. Showing the wealth is contrary to humble leadership. Finally, and this may seem picky, but we have always thought that other than customers and vendors, parking spaces should be designated so that those who get to the space first use it, as opposed to a line of spaces reserved for the leadership team. Few things speak as clearly to a poor management work ethic as a front row of unoccupied parking spaces reserved for your leadership team and in plain view of your employees walking in to work each day from your lot on the back 40.

- **You Disregard the Impact of the World Around You**

The world around you is both within the workforce and outside it. One such example is a recent union organizing campaign where employee benefits played a huge role in the union's appeal to employees. The problem with the employer's benefits was that virtually none of the hourly workforce could afford them, compared to nearly all of the salaried workforce. The company simply hadn't recognized the fact that its otherwise desirable benefits package was unattainable to nearly all of its workforce who had daily direct customer contact. An employer who touts its comprehensive benefit package that is unaffordable to the majority of its workforce is asleep at the wheel. And a union organizing campaign can be one heck of a wake up call.

Another issue that requires employers to be in touch with the world outside is the rising cost of gas. Although it's an external issue, outside the control of most employers, it has a dramatic effect on your employees. When gas prices go up, it costs employees much more to come to work for what they earn. How many daily commuters do you employ? Has your organization said "so what" to gas prices or have you examined alternative work schedules, such as four ten-hour days or three 13-hour days? In other words, you need to think creatively about what your organization can do to show employees you are empathetic to the challenges they face when choosing where to work or whether to work at all.

It's amazing how often scheduling itself can become an issue driving employees to unions. Every union organizer is going to promise employees that they'll straighten up the employer's inconsiderate or arbitrary scheduling process by fixing it with a collective bargaining agreement. We think employers should never pass up an opportunity for workforce engagement on the subject of scheduling. Scheduling can rattle employees to their core, because it's about their lifestyle, it involves sacrifices, and it affects their relationships away from work. Whether the schedule is unpredictable, whether employees are randomly sent home due to lack of work, or whether these changes disrupt established childcare or other family responsibilities, employers too often minimize the impact of work schedules.

- **Your Employees Have No Idea How to Get Ahead In the Company, Earn More Pay, or Seek A Promotion**

"My employees are just here to punch the time clock." Ever heard that one before? If your workforce seems unengaged or disconnected with your mission, product or service, start by looking at the organization itself. What have you done to engage that workforce? What messages are you sending about the reward or opportunities available to those who are engaged or want to get ahead?

In another recent union organizing campaign, the union appealed to employees frustrated because they did not know what additional coursework they needed to complete in order to be considered for a promotion or make higher pay. Employees could see the employer hiring for its higher paid positions and simply wanted to know what they needed to do in order to be considered for those positions. Despite the occasional freeloader, most employees aren't looking to get something for nothing. However, your organization has to inform employees how they can increase their value to the organization, other than to stay out of trouble.

- **You Spend Little or No Time Orienting Newly Hired Employees on Your Organization's Culture**

In many organizations, new hire orientation is limited to the processing of paperwork—the paper fortress that all employees sign as part of a new hire packet. But orientation is a critical time to continue the process of educating employees about the workplace culture. Culture is much more than your employee handbook. It's what you stand for. It's your core business values, your mission. It's what is expected of employees and what they must contribute in order to achieve those values and that mission.

Often employee disaffection from work is the result of a poor supervisor, the outsourcing of jobs, or replacement of regular employees with temps. However, disaffection is also the result of the employer's failure to make the employee feel part of something special. Unions definitely have a knack for togetherness. Unions are united, they're unified, and they speak of their union brothers and sisters. For many employees and union members, unions foster a sense of belonging, a sense of purpose, a sense that they mean something to or play a vital role in an important, larger group. Employers need to co-op that sense of belonging to something special. That's what we mean by workplace culture. And regardless of the size of your organization, an effective cultural orientation of new hires is essential.

- **You Appease Your Employees with Negative Attitudes Because they are Otherwise Productive**

It's a canon of HR wisdom that employers should be reluctant to terminate employees because of their poor attitudes. We've been taught that "attitude" is a highly subjective qualifier that can be used as a pretext for an illegal termination. There's certainly some historical evidence to support that conclusion. But where an employee exhibits behavior contrary to your organization's culture, and it doesn't change, you can't ignore it. Ignoring it simply enables the behavior and increases the risk that it will be a negative influence on the behaviors of others. More often than not, a supervisor's complaint that an employee

has a bad attitude isn't pretext, but rather a lazy attempt to label what could better be described by focusing on the specific behaviors of the employee.

When you see early in the employment relationship that a hiring mistake has been made, correct it promptly, terminate early. Although in some union organizing campaigns the pro-union ringleaders are highly respected, capable employees with good attitudes (a difficult election for employers to win), in so many situations union organizing is initiated by your laziest, most disgruntled, least team-oriented employees. For example, in a recent union campaign we defended, a newly hired employee within the first four months exhibited a poor attitude, but was otherwise adept at the work assigned. Rather than correct the hiring mistake, the employer thought that perhaps a fresh start at another location would be helpful. As a result, the employer simply punted the problem employee to another work site. Of course, the transfer had no effect on the employee's attitude. She simply started organizing a union at the other location.

- **You Tolerate Marginal Performance**

Where you tolerate marginal performance, you frustrate

and disengage your exceptional employees. When they express their frustrations through the usual channels but the marginal performers remain, you also risk union organizing activity.

Employees are smart enough to know that merely uttering the word "union" will lead to swift company action on issues that have been long ignored. Often the employees' greatest leverage is to get your attention with a union organizing campaign, but secretly plan that they will never actually vote one in. However, unionization can take on a life of its own and, rather than sending a message, employees could get stuck with a union. Make sure your employees know that they have your attention.

- **You Reduce or Eliminate Rewards and Recognition Programs**

You're not the only employer who has cut costs or implemented reductions. But don't forget that your employees have personally suffered through the recession at the same time as your business. Reducing or eliminating your employee reward and recognition programs among your other cost cutting measures is like bayoneting the wounded.

Recognize that in the difficult times many employees are



Cloud Technology
for People Management Solutions

Ultimate
SOFTWARE

People first.

1-800-432-1729
www.ultimatesoftware.com

actually working their hardest and showing the greatest commitment. Eliminating or reducing employee rewards and recognition sends absolutely the wrong message at a time when you're probably demanding the most from whatever staff you haven't reduced. For this reason, it's during the most difficult times that employers should actually enhance rewards and recognition programs, emphasizing the common theme that we really are all in this together.

• You Don't Talk About Money in Front of the Children

So many employers believe that company financial information shouldn't be discussed with the rank and file employees. Still, your employees are leaders in the community; they lead or contribute to religious centers, civic and charitable projects, and youth activities. Why do you think they shouldn't be bothered with the details of whether your organization is meeting its financial and growth expectations? Now we're not suggesting you open your books to employees like they're the annual auditors from Ernst & Young. But in order for employees to feel proud and part of the greater mission of an organization, you have to show them enough respect to trust them with core business information, including finances. If you don't show them the truth about how your business is doing, they'll be much more vulnerable to the union organizer's assertion that the company is flush with cash that they aren't sharing with the very employees who make it all happen.

A key to remaining union free, becoming an employer of choice, and avoiding other employment disputes, is to treat the employee like a participant, customer, or stockholder, not a spectator. Look for opportunities during the course of the year to review business information in a substantive way with the workforce. Talk about it at Thanksgiving, and build on the themes of togetherness and thankfulness. Discuss the core business information each January, and use it to reflect on the prior year while looking ahead to the goals for a new one. In other

words, your strongest presentation of information about the company should not only be to your board of directors, but also your board of governors, your workforce.

RICHARD I. LEHR (rlehr@lehrmiddlebrooks.com) and DAVID J. MIDDLEBROOKS (dmiddlebrooks@lehrmiddlebrooks.com) are founding partners and MATTHEW W. STILES (mstiles@lehrmiddlebrooks.com) is a shareholder of the labor, employment and benefits law firm of Lehr Middlebrooks & Vreeland, P.C. of Birmingham, Al. Richard has been accorded the "Super Lawyer" and "Best Lawyers" designation by peer rating services; David has been selected as a top tier labor and employment attorney by Chambers USA Guide to Lead Business Lawyers, has defended hundreds of employment cases, including several class actions and was recently listed in Best Lawyers of America. Matthew has been named a "rising star" by Alabama SuperLawyers and has been ranked as an "up and coming" lawyer in Chambers USA's guide to the Leading Lawyers for Business.



1 KINGSDOM APARTMENT HOMES MOBILE, AL. www.kingdomapartmenthomes.com	6 SUNSHINE APARTMENT HOMES MOBILE, AL. www.sunshineapartmenthomes.com
2 MOBILE, ALABAMA APARTMENT HOMES MOBILE, AL. www.mobileapartmenthomes.com	7 FAIRMORE, ALABAMA APARTMENT HOMES FAIRMORE, AL. www.fairmoreapartmenthomes.com
3 BAY BRIDGE APARTMENT HOMES DAPHNE, AL. www.baybridgeapartmenthomes.com	8 SOUTH POINT APARTMENT HOMES MOBILE, AL. www.southpointapartmenthomes.com
4 EAST BAYVIEW APARTMENT HOMES DAPHNE, AL. www.eastbayviewapartmenthomes.com	9 SUNSHINEFIELD APARTMENT HOMES MOBILE, AL. www.sunshinefieldapartmenthomes.com
5 FAIRMORE, ALABAMA APARTMENT HOMES FAIRMORE, AL. www.fairmoreapartmenthomes.com	10 PERDUE AVE. FLORIDA APARTMENT HOMES MOBILE, AL. www.perdueavefloridaapartmenthomes.com
11 WINDSCAPE APARTMENT HOMES MOBILE, AL. www.windscapeapartmenthomes.com	

Tonsme Properties is small enough to give you the personal attention you need and large enough to get the job done right. Please contact us today to let us help you find a home that fits your lifestyle.

125 Royal Drive
Madison, AL 35758
P. (256) 772-7030
F. (256) 772-8337

www.windscapeapartmenthomes.com

ALABAMA BUSINESS LEADERSHIP EMPLOYMENT NETWORK

ABILITIES AT WORK....READY, WILLING, AND ABLE

The ABLE Network utilizes a business-to-business approach in providing its members with disability related information, resources and expertise.

With ABLE Network's business-to-business approach, your business can receive assistance in the following areas:

- Disability Management
- On-line Recruiting
- ADAAA Resources
- Disability and Employment Related Training
- Recruiting or Employee Retention Services
- Accommodation/Technical Assistance
- Business Best Practices

Contact:

Roger McCullough,
ABLE Network Chairman
Phone: 205.907.5920
Fax: 205.279.3517
Email:
Alabamabln-diversity@yahoo.com

Business Leadership Network
USBLN
DISABILITY AT WORK

An Affiliate of the US Business Leadership Network

Looking for a diverse, untapped, labor market of qualified applicants with disabilities?

Your On-line Recruiting Resource for job applicants with disabilities is only a click away!

www.alabamabln.org

- * Career Stability
- * Personal Growth
- * Vibrant University Community

Join a team that's
Caring. For Life.

Tuscaloosa, Alabama

Human Resources Consultant Leave Management Specialist

Learn about these and other DCH career opportunities and apply online at:
www.dchsystem.com.

DCH Health System is an equal opportunity employer.

DCH REGIONAL MEDICAL CENTER

NORTHPORT MEDICAL CENTER

FAYETTE MEDICAL CENTER

DCH
Health System
Caring. For life.

In a Race Where Teamwork Counts

TRANSAMERICA and the Lance Armstrong
Foundation are united in the fight against cancer.

The **TRANSAMERICA**® **LIVESTRONG**® SurvivorPlan group cancer and group critical illness policies. Employers get educational tools to promote wellness and early detection of cancer along with a broad array of resources designed to help employees choose healthier lifestyles and reduce the risk of future illness.

Employees get wellness benefits, insurance protection and one-on-one support to help with cancer insurance, treatment and recovery.

Call **Marie Lackey** at **205-568-0992** or
email marie.lackey@transamerica.com



Transamerica is proud to support the Lance Armstrong Foundation through its license of the **LIVESTRONG** trademark. In addition, one dollar per month per insured is contributed to the Foundation to help in the fight against cancer.

LIVESTRONG is the brand of the Lance Armstrong Foundation, created in 1997 by the cancer survivor and champion cyclist to serve people living with cancer and empower communities to take action.

HR: The Next Generation

Non-Traditional HR Roles Become More Common

By Paula Watkins, SPHR

One of the things about growing older is that perspectives change. I used to give a presentation about how much the employment world has changed over the course of the past 25 years. I spoke of looking for my first job; searching the Los Angeles Times in the “Help Wanted – Female” section. I told of the Sears and Roebuck application I completed that inquired when I had had my last menstrual cycle and how long it had lasted. And, I did not question any of it.

Now, being a leader in Human Resources is mastering the ability to envision the shape Human Resources delivery and services will take in the future. Change is moving at the speed of thought such that “now” is swiftly becoming the future. Although many Human Resources professionals remain in what I will refer to as “traditional” roles, a growing number are being utilized in creative manners and relationships. To be clear, the “traditional” role is when an HR person is dedicated to HR at a single employer and resides at one or more of their locations.

Even “traditional” roles are morphing and HR professionals are being negatively impacted. HR professionals have had to get creative as economic conditions affect them. For instance, many companies have moved from large HR staffs to centralized HR. One of my former employers had over 600 HR personnel in 2007 supporting 43,000 employees. While the headcount continued to grow the company cut 400 of those HR positions and created a centralized, digitalized,

do-it-yourself service facility where most staff members are not HR professionals.

So how do 400 displaced HR Professionals find work during the Great Recession?

Back in the mid-1980’s I fought my way onto a panel discussion for the HR majors at St. Olaf’s College in Minneapolis. I was a member of the Human Resources Professionals of Minnesota and we were educating the students about how to get a job in HR. At that time, the mid-1980’s, I represented “non-traditional” HR in my position in the staffing industry. At that time, that was like being the “bastard child” of HR. Today, HR Professionals move with ease between the staffing business, traditional HR roles and some of the many other trends of the profession. Let’s take a look at some of those trends that represent job opportunities for us.

1. Become a Blogger. Anyone with the know-how can set themselves up as an on-line HR guru on any number of subjects. Being a Web Advisor gets you visibility. Those successful at attracting an audience can charge subscriptions for shielded content and collect fees for advertising placements.

2. Start your own Company. HR Professionals have a myriad of skills. We are trainers, workers’ compensation and safety experts, engagement and survey implementers and policy makers. We know compensation and benefits, unemployment, HR technology. We know how to write, how to investigate and how to plan events. We have recognized and rewarded and we have sales experience.

3. Become a sales person. A common trait for HR Professionals is that they say that they don’t want to sell; that they are not good at selling. This is the furthest thing from the truth. HR Professionals sell every day. They sell candidates on taking jobs for less than they are seeking; sell employees on benefits packages that are escalating on price and decreasing on coverage; sell employees on doing tasks that the employee doesn’t really want to do without increases in remunera-

tion. They sell their decision makers on new programs, new benefits, increases in compensation plans, reduction recommendations, policy changes and performance evaluation strategies. We are the consummate sales persons because we deal in people's lives and livelihoods.

4. Compete for Grants. In 2001 when I was “between jobs” I submitted a grant application to OSHA for one of the Susan B. Harwood Safety Training Grants. For three years my company employed five persons conducting free OSHA sponsored training in five southeastern states.

5. Work in the Staffing Industry. Now, the problem here is that when the economy is slow, so is the Staffing business. It is also one of the first indicators of an improving economy. Working a staffing job brings all your HR skills into play – interviewing, selection, employee relations, payroll, termination, background checking and drug testing. The full gambit... including sales.

6. Work for a Professional Employer Organization (PEO). A few decades ago using temporary help was a concept sell. Now the “new concept” is the PEO. According to the industry's professional organization (NAPEO) there are more than 700 PEOs in 50 states representing \$81 billion in business. The concept is based upon a co-employment relationship in which employer responsibilities are allocated via a Client Service Agreement between a client company and a service provider, the PEO. While the staffing industry avoids all semblance of co-employment, the PEO embraces and promotes it. The PEO has contractual relationships primarily with small and medium companies. The average number of employees for a PEO client is 19. Some 32 PEOs are certified by ESAC (a kind of FDIC for the industry) and the Certification Institute (CI) which audits workers' compensation processes.

PEOs sell the provision of HR services so naturally they employ HR Professionals. The PEO is the employer of record so the HR Professionals are consultative to the client in all employee relations issues, responses to EEOC charges, lawsuits, unemployment claims and workers' compensation events. They provide payroll services, benefits offerings, training, reports such as turnover reports and work on strategies to improve the workplace and processes. Some PEOs have master workers' compensation policies. The SUTA rate normally belongs to the PEO.

Some PEOs have Regional HR Managers who serve several clients as a type of circuit riding HR. These are usually HR Professionals with lots of varied HR experience.

The upshot is that the small and medium business owner or manager can use their time to tend to the moneymaking parts of their businesses.

7. Virtual HR. Some companies have parts of HR which can be conducted with virtual departments and the work can be done by department members from their home offices. These departments may be Business Intelligence units which dissect the statistical elements of the people part of the enterprise. They design dashboards and evaluate the data for accuracy and meaningfulness. Members can be strewn throughout the country working through Skype connections and electronic data sharing.

8. Be a Headhunter. Utilize all those search and find skills honed in the traditional HR role and become a professional recruiter. So, what is the difference in a recruiter, direct placement specialist and a “headhunter?” Money, skill and difficulty factor. Lower level positions will normally be contingency searches. The higher the skill and difficulty factors, the more likely that the search can be exclusive and retained. Recruiters draw upon data bases; direct placement specialists are more likely to search for appropriate but passive candidates; and, headhunters, well, they are extremely well remunerated for locating rare birds within specific areas of expertise. The first real headhunter I ever met was focused on locating an executive to run the King Ranch holdings in Hawaii; a pineapples, cattle and hospitality mix.

9. Consultancy. It has been common practice for unemployed persons in all disciplines to work as a consultant. This was more a fall back solution rather than a preference. HR Professionals, however, are finding consultant status to their liking. As one shared, “It is nice to be able to fire the clients you don't want to work with”. Whether as a single practitioner or as part of a company working on a project basis, HR consultants are sticking with their chosen work style even as the market for HR Professionals is opening up again.

With all these variations in the same profession, imagine a SHRM meeting in Cyberspace. You might think you will recognize a HR Professional when you see them but many just do not look “traditional”. We really are HR: The Next Generation.

PAULA WATKINS, SPHR is Vice President, Human Resources for Lyons HR and has over 30 years of experience in Human Resources and Operations. Paula received her undergraduate degree from UCLA and her Masters from the University of Missouri-St. Louis. She is past director of the Alabama SHRM State Council; served on a national Board of Governors for SHRM and continues to support her local chapter and the State Council by holding a variety of volunteer leadership positions.



The Secrets of Getting The Most From Your Recruitment Advertising

Hint: Stop Thinking Like An HR Person

By Dawn Hrdlica-Burke, PHR and John Faure, SPHR

Have you looked at your organization's job postings lately? Have you looked at any job postings lately? Go to indeed.com right now. Yes now. In the search bar type in "Human Resources" (in any city will be fine) and hit "Find Jobs". Now wait. What do you see? Lengthy and jargon-filled job descriptions pasted in. Ads that are downright boring. Poorly composed ads that are clearly the product of a committee; the result of some unresolved internal debate or the work product of someone in legal who normally writes proxy statement footnotes.

Why does this happen? Because we have become lazy. Listen, we aren't judging because we've been there. We don't think we are lazy because in every other sense the great HR pro is anything but; we all have so much to do with little resources. So we cut corners. HR friends, our recruitment advertising is not always something to be proud of. Our job postings, which are our first opportunity to introduce someone to the culture of our organization, are often miserable.

Perhaps a big part of the problem is we don't understand that a job posting is advertising, and we HR types are generally not very advertising savvy (to put it kindly). We are used to writing policies, memos, termination letters, SPDs, etc. which are a long ways from snazzy advertising.

Our point of view is that what we need to do is to stop looking at our recruitment advertising from role of HR pro and more from the role of a marketing guru. So in that spirit, here are some suggestions to help you create the most effective recruitment advertising:

FOOD FOR THOUGHT

- ***Before you begin any external job advertising for any job, stop and think, "Do I even need to post this job?"*** Internal referrals in many, many cases are all you need. Internal referrals typically generate the most effective hires. You all know

that. We might suggest in addition to an external advertising strategy an HR Pro needs to get cracking on an internal referral strategy.

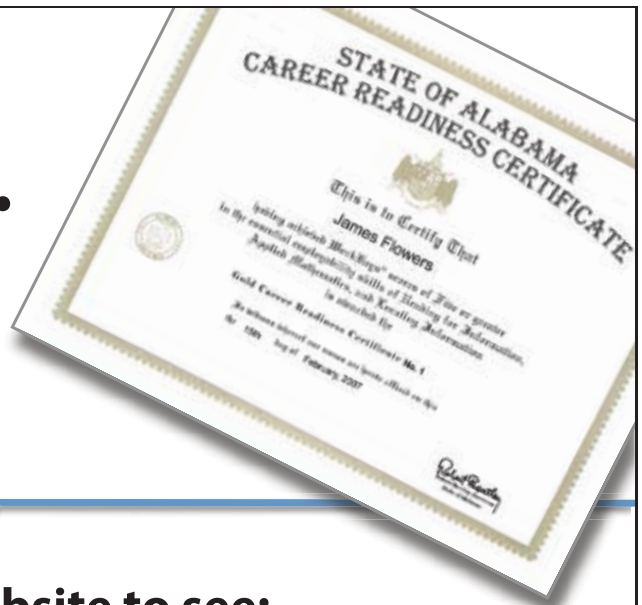
- ***Even better, before you post that job, get going on a succession plan strategy.*** That is hiring gold and it feels really good to promote hard-working, internal, qualified candidates.
- ***Jobs should be less about skills and more about behaviors.*** For real. All descriptions in an ad need to have behavioral context to all of the "requirements" listed. Skills are important but don't differentiate your long-term, "A-Player". Of course you'll list skills, but spend more time describing the outcomes you want the applicant to achieve and the values that must be consistent between the candidate and the company. You won't regret it.
- ***Last but not least, quit over-thinking the "legalities" of your postings.*** You are an intelligent HR pro. You know that you must not discriminate. You know that you have to be (reasonably) truthful in the content. But many worry too much about creating descriptions to cover every liability that they forget the heart of the job ad. Training your interviewers to ask questions that are legally sound is a far better legal strategy than a boring and heartless job ad.

BRANDING

Branding is one of the most important things you do. When you are competing with thousands of postings on Indeed.com and Simply Hired you must differentiate your organization from the pack. We just did an indeed.com search for Birmingham and found 40 HR job postings. A search for the state of Alabama yielded 80 postings. You have no choice but to create a unique title and headline. For instance, instead of "HR Generalist" you may say "Looking for Rockstar HR Generalist Talent". OK, if it isn't practical to have a unique job title, make sure the first paragraph of your ad captures attention. If your posting title doesn't intrigue the reader enough to click on the link to read the text, you don't even get in the recruiting game.

A Key Step in Reducing Turnover...

WorkKeys + Alabama Career Readiness Certificate (CRC) = the best tool to hire and retain employees!



Visit our website to see:

- How Businesses Use the CRC
- How Grant Funds Can Help
- How to Get Involved

<http://careerreadyalabama.dpe.edu>

**99
percent**

**of our client's
staffing needs
are matched
with qualified
candidates.**

Call today.

- On-Site Staffing
- Temporary
- Try/Hire
- Direct Placement
- Payroll

We perform background checks, recruiter interviews, pre-employment drug screenings and skills testing.



**Personnel
Resources**

Partner with experts.

Personnel Resources is locally owned and operated in Dothan, Alabama. Since 1987 we have offered the best staffing solutions for Alabama, Florida, Georgia and beyond. Our geographical reach for recruiting and staffing is limitless across the United States.

5585 West Main Street • Dothan, Alabama
(334) 794-8722 • (888) 946-9675
www.PRDothan.com

Human Resource Administration • Insurance
Accounting Services • Risk Management

- If you lead your ad text with a job summary, Please, don't make it boring, or incomprehensible, or seven paragraphs long! A good example of an interesting headline we found was for a PT internship: "Forget coffee runs and hours spent at the copy machine. This isn't your typical internship!..."
- Your advertising strategy should mesh closely with your organization's marketing and advertising plan, so if you've never talked with anyone on that end of the company, now's the time. Someone in sales or marketing may be an advertising expert who can make sure your job ads are consistent with your corporate brand. (Of course if the corporate branding is boring you may want to go in a different direction!)
- Need a stat? Careerbuilder stats you gain an average of 14% more applicants if your posting design reflects your corporate brand.
- OK...we're giving you one out. But with a condition. If and only if you have GREAT employment branding on your applicant tracking system or website, you may be able to be a little less creative in your job ad. You may not be as competitive on indeed.com but at least you are differentiating yourself in some way. For instance, some companies have a blog that houses the applicant tracking system. To get to the job you have to see the blog first.
- One last thing, a direction that may work if you have a branded ATS is to write short, catchy, "teaser" ads that link directly to your ATS where your more traditional job descriptions are located.
- And about that social media thing....everybody needs to get hip to this. Social media simply makes you a more engaging HR pro. By having authentic conversations with recruits you learn more about them. Again, quit over-thinking all the legalities of "knowing too much". You are a smart HR pro; just like in an interview don't engage in conversations that make you nervous. But frankly those conversations are few and far between.
- Typically LinkedIn is the most prevalent social media tool used by recruiters. Mainly because there are many free places to post jobs. However, Twitter and Facebook is being used by too many people to ignore this source.
- Placement should focus on attracting quality candidates over large quantities of candidates. See the "Food For Thought" section above about describing behaviors.


SOME GOOD POSTING PRACTICES

- Job descriptions and ads are written for different purposes, so they are not interchangeable. Please don't just paste a job description into the ad box.
- It's ok to use industry, professional or technical jargon that should be understood by the target audience but may not be understood by the general public. Even though incomprehensible to most humans "Programmer Web Access Management/SSO" is acceptable jargon because qualified candidates will understand it, and we don't really care if unqualified candidates don't understand, do we? However, don't use company-specific jargon that would likely not be understood by the target audience.
- Clearly describe the role and the principle responsibilities in language the target audience can understand.
- Describe the minimum requirements that candidate must meet to be actively considered. In our experience, candidates rarely screen themselves out, but there is zero chance it will ever happen if the minimum requirement isn't clearly stated. (This is especially important for government contractors.)

AD PLACEMENT

Placement isn't rocket-science. It just takes a little common sense.

- A multi-source strategy is almost always the way to go. There is usually no single "best-place" to advertise. If your ads are drawing good candidate flow, then keep using whatever is working for you. A mix of internal sites, job boards, niche-sites, LinkedIn and social media should be used.



Pam Werstler, SPHR
Alabama SHRM
State Council
Director
Find me on Twitter:
@hrpamw

HR **Leading People**
Leading Organizations
Making Alabama Stronger

KELLY

Your
staffing
solution
specialists

Montgomery Office:	Selma Office:	Opelika/Auburn Office:
4142B Carmichael Rd. Montgomery, AL 334-272-6522 334-272-5415 fax 1055@kellyservices.com	104B Executive Park Ln. Selma, AL 334-418-0972 334-418-0945 fax 1059@kellyservices.com	2200C Gateway Drive Opelika, AL 334-742-9111 334-745-7551 fax 1056@kellyservices.com

- List the preferred qualifications that may help attract the targeted candidate (“Hey, that describes MY background/skills exactly – maybe I should apply to this job!”)

- Make sure your ad is consistent with the company’s branding, marketing and advertising and presents the company positively to the general public. The tone and tenor of your ad should be reflective of your company’s culture. If you are a cutting-edge technology startup, you don’t want to sound like an insurance company, and vice versa.

- Briefly describe what your company does if it isn’t one that everybody in the ad market recognizes.

- List the exact or general office location – candidates appreciate this courtesy.

- Include anything else unusual – heavy travel, unusual schedule (for that job), etc.

Spending some quality time focused on your recruitment advertising will improve your

organizations’ image, attract more and better candidates and start your recruiting process off on the right foot.

DAWN HRDLICA-BURKE, PHR, (dhuburke@daxko.com) is the VP of People for Birmingham’s own Daxko. Dawn was recently awarded the 2011 Top HR Executive for medium sized companies by the Birmingham Business Journal. Also, as an active HR blogger for both Workforce Management’s Fistful of Talent (www.fistfuloftalent) and her own blog, the HR Insomniac (www.hrinsomniac), she has been recognized by the HR Examiner as a Top 25 Online Influencer.



JOHN FAURE, SPHR (Faure@Bellsouth.net) is Director Human Resources with MailSouth, Inc., has more than 20 years multi-industry HR experience and serves as Chairperson of the Birmingham Society for Human Resource Management’s Advisory Council.



**PROJECTS
UNLIMITED**

an Association Management Firm

www.relaxitshandled.com

Twitter: @TheRelaxReport

“Relax, It’s Handled.”

Providing chapter and
event management for
volunteer leaders of

Alabama SHRM
www.shrmalabama.org

BSHRM
www.bshrm.org

**Southern Employee
Benefits Conference**
www.sebc.org



Smile.

At Delta Dental, we give you a lot to smile about.

Some of the nation’s largest dental networks. Cutting edge technology to help make your job faster and easier. Satisfaction rates among the best in the business.* An emphasis on preventive care. We focus on being the best group dental plan you can find — that’s all we do. That’s why so many employers trust their employees’ smiles to Delta Dental.

Find out more about Delta Dental Insurance Company at www.deltadentalins.com or by calling 800-322-7976.

* Based on a nationwide survey “Brand Awareness and Perception Survey” by The Long Group for Delta Dental Plans Association (2008).


DELTA DENTAL®

58435-AL

Index of Advertisers

ABLE NETWORK, INC	62	MHCA	33
AFLAC-BRIAN MANN	5	MOBILE SHRM	11
AHI CORPORATE HOUSING	43	MONTGOMERY SHRM	19
AIDT PUBLIC INFORMATION OFFICER	25	MY GIFT MY CHOICE	72
ALLIANCE INSURANCE GROUP	1	NASHRM	38
AMERICA'S FIRST CREDIT UNION	21	NATIONAL PACKAGING CO.	68
BENEFITS FOR AMERICA	23	OGLETREE, DEAKINS, NASH,SMOAK & STEWART	IB
BLUE CROSS BLUE SHIELD OF ALABAMA	51	PERSONNEL RESOURCES	67
BRADFORD HEALTH SERVICES - PHP COMMUNICA	55	PRESTO PARTYZ	33
BURR AND FORMAN	31	PROJECTS UNLIMITED	69
CAPELL & HOWARD	47	RESOURCE MFG	29
COOK'S PEST CONTROL	27	SHOALS SHRM	57
CUMMINGS CREATIVE GROUP/ VIVA HEALTH	BC	ST. VINCENT'S-WELLNESS SERVICES DEPT	13
DCH HEALTH SYSTEMS	63	TANNER & GUIN, LLC	IFC
DELTA DENTAL INSURANCE COMPANY	69	THE KULLMAN FIRM	37
EASHRM	57	THRP	46
HCC LIFE INSURANCE COMPANY	30	TRANSAMERICA	63
HUB INTERNATIONAL	15	TVC-SHRM	57
J. SMITH LANIER & CO.	19, 26	ULTIMATE SOFTWARE	61
JACKSON LEWIS LLP	35	UNA-CONTINUING STUDIES	27
JONES WALKER	3	UNITED CONCORDIA	42
KELLY SERVICES	68	WALLACE COMMUNITY COLLEGE	67
LEGAL ADVANTAGE HR SOLUTIONS	57	WARD SERVICES	39
LYONS HR	41	WE CARE TLC	71
MAX CREDIT UNION	34	WHRMA	43
MCGINNIS & ASSOCIATES	47	WINDSCAPE APARTMENTS.....	62

Affordable Medical Care At The Workplace



WeCare TLC implements and manages onsite, or near site, primary care clinics that are medical management platforms. All WeCare TLC clinics nationwide have seen an 18-30% decrease in health care costs within the first 6 months, net of the clinic investment.



WeCare TLC Differentiators

- Transparent, Accountable Business Relationship
- Fully Empowered Primary Care Providers Resulting in Significant Decrease of Specialist, ER, and Urgent Care Utilization
- Onsite, Face-to-Face Lifestyle Management
- Services Customized for Each Client
- Performance Guarantees
- Local Clinic Oversight by WeCare TLC's Corporate Clinicians
- Staff Dedicated To Your Clinic Only

WeCare TLC's approach is based on 4 key facts:

1. Many employees do not have primary care.
2. WeCare TLC's proven solution: Primary care onsite or near site clinics that truly focus on decreasing the cost of health care while increasing the health of the employee population.
3. Patients sometimes make short sighted health decisions.
4. Modern day "one-size fits all" approach to medicine does not work.

Learn More at
www.WeCareTLC.com
800-941-0644

Jimmy Parrish
Parrish and Associates, Inc.
(205) 585-8595 • 877-PARRISH
jparrish1018@gmail.com



Better Care | Lower Cost

Presenting
The Complete Package



**Wrap your mind around a workplace giving campaign that's
inclusive, efficient and transparent.**

Unlike any other campaign.

Come see us at our booth on May 16th or visit us on the web at

www.mygiftmychoice.org

Ogletree Deakins

A unique perspective with a client service-focused approach can make all the difference in handling workplace disputes. Ogletree Deakins is one of America's leading labor and employment law firms with 40 offices from coast to coast, including Birmingham.

Let our client service-focused approach bring a winning new angle to your company.

LABOR & EMPLOYMENT
LAW

FROM A DIFFERENT
ANGLE



LAW FIRM OF THE YEAR

Litigation – Labor & Employment

BIRMINGHAM FIRST-TIER RANKINGS

Education Law

Employment Law – Management


Labor Law – Management

Litigation – Labor & Employment

One Federal Place • 1819 5th Avenue North, Suite 1000 • Birmingham, AL 35203 • (205) 328-1900

www.ogletreedeakins.com

No representation is made that the quality of legal services to be performed is greater than the legal services performed by other lawyers.



Keep healthcare
distractions low and
employee complaints
even lower.

**VISIT OUR
NEW WEBSITE
WHYVIVA.COM**



**With VIVA HEALTH, you get much more than
affordable health insurance for your employees.**

You get total peace-of-mind and personalized customer service based right here in Alabama. Not to mention, a high quality plan from a company you can trust.

Discover why an overwhelming majority of our customers renew their coverage with us year after year.

Call us today for a free quote.

BIRMINGHAM & NORTH ALABAMA
Drew Wood 205-558-7617

MONTGOMERY, MOBILE & SOUTH ALABAMA
Mark McLaughlin 205-558-7524