

# SPECIAL REPORT

A supplement to BLR publications

# Top 10 Best Practices in HR Management For 2007

Prepared for the *HR Daily Advisor*



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# Top 10 Best Practices in HR Management For 2007

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# Introduction

The role of Human Resources is changing as fast as technology and the global marketplace. Historically, the HR Department was viewed as administrative overhead. HR processed payroll, handled benefits administration, kept personnel files and other records, managed the hiring process, and provided other administrative support to the business. Those times have changed.

The positive result of these changes is that HR professionals have the opportunity to play a more strategic role in the business. The challenge for HR managers is to keep up to date with the latest HR innovations—technological, legal, and otherwise.

This special report will discuss the top 10 best practices in HR management for 2007—in other words, how HR managers can anticipate and address some of the most challenging HR issues this year. This report will give you the information you need to know about these current HR challenges and how to most effectively manage them in your workplace.

## #1 Controlling Healthcare Costs

According to a recent survey by Watson Wyatt Worldwide and the National Business Group on Health, employers expect healthcare benefit costs to increase approximately 8 percent in both 2006 and 2007. Knowing that healthcare costs will not decrease in coming years, the challenge then becomes how to control the increases to manageable levels.

Consider the following best practices to address rising healthcare costs:

### Wellness Programs

There is little question that employers can have a positive impact on employee behavior. Done well, employer-sponsored wellness programs have been successful in helping employees make better choices. Some such activities are full blown programs. Others are small, finite activities that are part of overall HR and safety. Wellness programs include:

- ◆ Exercise and fitness
- ◆ Smoking cessation
- ◆ Blood pressure management
- ◆ Weight management
- ◆ Stress management
- ◆ Cholesterol management
- ◆ Nutrition

# 101 Ways to Wellness

The Wellness Councils of America believes the workplace is the ideal place to promote worker health and well-being. To that end, the organization has published a list of 101 tips and strategies (the entire list is at <http://www.welcoa.org>), including:

- ◆ Promote a healthy diet.
- ◆ Make sure drinking water is available to your employees.
- ◆ Provide information for depressed workers.
- ◆ Talk about fire safety at work and at home.
- ◆ Implement a pre-shift stretching program.
- ◆ Promote use of seat belts.
- ◆ Pay attention to noise levels at your facility.
- ◆ Teach proper hand-washing techniques.
- ◆ Promote safe recreation, including bicycling and boating.
- ◆ Initiate a sun-safety campaign.

In order to establish well-crafted wellness initiatives, consider the following tips:

**Offer options.** Offer employees a range of services gauged for varying levels of readiness to change. Resource and referral programs, for example, are good for addressing a problem quickly and on a one-time basis. In-depth health coaching (often called disease management), by contrast, works well for older employees and those with chronic conditions.

**Target employee goals.** To increase participation, target such specific goals as weight loss, stress reduction, diabetes management, cancer prevention, and heart risk evaluation. Help employees connect each, offering a dietitian's advice, blood pressure and/or cholesterol screening, reimbursement for costs of fitness programs, for example, with its health benefits or the conditions it will help to prevent.

**Provide "next step" instructions.** If you provide a health risk assessment, build in action steps to address whatever risks an employee identifies. In other words, offer immediate follow-up advice as part of the tool.

**Use wellness-oriented incentives to encourage participation.** For example, consider discount employee healthcare coverage premiums for those who achieve certain goals, such as weight loss or smoking cessation. Or, in addition to fitness reimbursement for such activities as gym membership, promote discounts or special offers on fitness equipment, weight-loss meals, or other products that fit in with your programs.

**Tailor your programs to the demographics of your workforce,** especially average age. Contrary to a common misperception, older employees are often more, rather than less, likely to be interested in wellness activities.

**Target obesity for the biggest payoffs.** According to a study by the Rand Corporation, healthcare costs associated with obesity are 36 percent greater than those for normal weight, and greater than those associated with smoking or heavy drinking.

## Employer Options: What to Do

Most HR and safety professionals have little trouble accepting the proposition that improving health will have a positive impact on workplace conditions. What is not so clear, however, is that short-term economic benefits will cost-justify expenditures, which is essential in selling the programs to management. Employers should consider the following:

**Program components.** All programs seem to have several components in common, including: 1) an assessment device that classifies employees based on “risk factors” and their interest/willingness to change, 2) some form of counseling to help the employee understand those risks and what can be done, 3) a recommended program of action, and 4) follow up to evaluate progress and reward and recognize success. Some programs are very elaborate, with counseling by physicians or other health professionals; others are simpler and cheaper.

**ROI cost/benefit.** There is agreement that if we reduce our risk factors, we can, as a group, reduce our health expenditures. (Risk factors are the things that people do, or the conditions that they have, that predict higher health costs. To establish risk and act as a counseling tool, an assessment device gets data about these factors from the employee: high alcohol use, smoking, high body mass index, stress, poor eating habits, high cholesterol, and risk for diabetes.)

Whether or not the return will justify the expenditure in any specific case will depend on a number of factors, including retention rates and the rate of adoption by workers. Potential benefits include a reduction in healthcare insurance premiums, workers’ comp claims, employee absences, turnover, medical leaves, retraining due to turnover, and inefficiency due to presenteeism.

## Beware of Legal Land Mines

Employers should be aware that some wellness programs can run afoul of federal and state laws in terms of reasonable accommodation, privacy, confidentiality of personal health information, and protection of off-duty conduct.

Wellness programs encourage employees to adopt or maintain healthy lifestyles—or at least take the first steps toward learning about healthy alternatives. Choosing healthier alternatives for reducing cholesterol levels, for example, may reduce an employee’s chances of suffering from heart disease. Less disease means employers can lower their plan utilization, thus lowering health benefits costs and, in turn, increasing profits. There are additional benefits, too, such as increased productivity, fewer workers’ compensation claims, better attendance, and improved morale.

However, wellness programs must be carefully crafted. For example, a wellness program that offers financial incentives to employees who walk a certain number of miles per week may discriminate against employees whose disabilities preclude them from reaching the target number. When developing a program, therefore, employers must be aware of the legal requirements that may impact their decisions. Offering a reasonable alternative that allows a disabled worker to earn the financial incentive may satisfy certain legal requirements, but crafting such alternatives may be challenging. Employers should have their legal counsel review a wellness program before it’s presented to employees.

## Best Practice: Getting Well with Fitness Programs

When Moen Incorporated opened a fitness center at its headquarters more than a decade ago, it did so as a “feel-good” type of service for employee morale, retention, and recruitment. Since that time, however, its wellness initiatives have had a significant impact on the company’s bottom line. An internal study found that for every dollar that Moen ([www.moen.com](http://www.moen.com)) spends on its wellness programs, it saves \$3 to \$4. That savings can be attributed to reduced time away from work and healthcare cost savings.

Moen’s Wellness Center is located at the company’s North Olmsted, Ohio, headquarters. About 280 employees, or 56 percent of the workforce at that location are members of the center. The company subsidizes the expense of running the Wellness Center. Membership costs \$15 per month and includes access to fitness equipment and related programs. Moen sponsors a variety of programs to help associates lose weight and/or maintain a healthy lifestyle, including massage therapy, personal training, yoga, kickboxing, health screenings, and monthly lunch-and-learn educational sessions.

## Cutting Program Costs

A variety of strategies for cutting program costs. Among these are making changes in the areas of plan design, financing, purchasing, vendor management, care management, pharmacy, and retiree medical management. Consider the following specific steps in cutting program costs:

**HSAs.** Many companies are implementing health savings accounts (HSAs), which are a cost-effective way to co-fund health care. HSAs are designed to help individuals save for future qualified medical and retiree health expenses on a tax-free basis.

**Network management.** Also recommended are high-performance networks where experts analyze cost and practice patterns, weeding out from the network specialists who cost much more than others. These are specialists who tend to order more tests and require more doctor visits than others. By removing them, the total cost of health care for employers decreases.

**Surcharges.** Another strategy for cost-cutting is introducing “dependent surcharges.” These are charges levied by companies to cover employees’ working spouses who could be covered under their own plan. The surcharge creates an incentive for the spouse to switch to his or her own plan.

**Volume discounts.** Joining a coalition of employers that leverages volume to purchase health coverage on a group basis can also help employers reduce costs. Volume purchasing power when negotiating with community providers leads to lower overall costs.

Not surprising, the experts maintain that no single method will reduce costs dramatically. Rather, implementing a variety of methods can help employers save money over the long term.

## Best Practice: Cutting Healthcare Costs

Kimley-Horn, an engineering firm, saw healthcare costs rising and combined plan options and wellness offerings to successfully combat the upward trend of healthcare expenditures. The company offers two preferred provider organization (PPO) plans to eligible employees—one with a \$500 deductible and the other with a \$1,000 deductible. Both plans include coverage of medical expenses, vision care, and prescriptions.

The firm pays the entire premium for the higher-deductible plan for employee-only, employee-plus-one, and family coverage, and the entire cost for employee-only coverage on the lower deductible plan. With a \$500 deductible, employees pay \$56 or \$85 monthly for employee-plus-one or family coverage, respectively.

Dental coverage costs \$35, \$74, or \$100 monthly for employee-only, employee-plus-one, or family coverage. A flexible spending account is also offered for employees who want to set aside money for out-of-pocket medical expenses on a pre-tax basis.

Rather than increasing the cost of insurance to employees, Kimley-Horn, a self-insured firm, has searched for other cost-saving solutions. For example, the company rents Blue Cross/Blue Shield's network of providers and pays a monthly fee for BC/BS to administer the plan.

Through this affiliation, employees earn prizes and gift certificates for reaching certain exercise milestones, and one-on-one counseling is available for health issues such as smoking, obesity, high blood pressure, and diabetes. Not only does this emphasis on wellness help keep employees healthy, it also reduces Kimley-Horn's out-of-pocket cost for medical expenses incurred by employees.

## Disease Management

Disease management is a system of coordinated healthcare interventions and communications for employees with conditions in which patient self-care efforts are significant. Employers who engage in disease management often find that they are reducing costs and they are preventing catastrophic claims from occurring.

To make disease management a success, you or your insurer must create the program thoughtfully and purposefully. When establishing a disease management program, consider taking the following steps:

- 1. Determine if your provider has a disease management program in place.** If not, you should reconsider your relationship with them. If they do, ask about their results, how they are reaching out to the members, and what they do to make the programs work.
- 2. Consider the communication process.** Provide employees' internal email addresses to your administrator for communication of health insurance information. Have your administrator communicate to employees about disease management opportunities. For most employers, that's a stretch—you're not sure you want them communicating directly with your employees. But as email becomes standard for communications, this is one thing that could really help employers make a difference. This is a major—and very important—change in perspective for employers that want to approve all communications to their employees.

- 3. Encourage participation through incentives.** Employers can create incentives for the employees, their spouses, and their children to take health risk assessments with their carriers. For example, offer employees a \$50 gift certificate for completing the health risk assessment, a series of questions, usually taken online. The assessment can be a very valuable tool in predictive modeling to find those people who need help.

## **Best Practice: Saving with Disease Management**

IBM first tried disease management in 1997 with a small pilot program for employees with diabetes. The company had such positive results that they expanded to other diseases in 1999 and again in 2001. Besides diabetes, IBM now has programs for congestive heart failure, asthma, depression, and coronary artery disease.

How successful are the programs? In the fiscal year May 1, 2003 through April 30, 2004, IBM saw a \$25 million in savings from the program. Five targeted illnesses accounted for more than 50 percent of IBM's overall claims costs. In order to make the most effective program, part of IBM's strategy was to contact all employees who registered on their risk assessments as potential beneficiaries of the program, not simply those with the highest risk.

It was this hard data that was critical in IBM's efforts to find indicators of particular conditions. However, quantifiable data is not enough; an employer will also need qualitative data from the members themselves. The employee needs to complete a health risk assessment and communicate with clinical staff to be a part of the equation.

### **Can Disease Management Work for Smaller Employers?**

For smaller companies, the real value proposition of disease management is an impact outside the healthcare plan. The greatest return on investment for smaller employers may be in productivity gains, reductions in absence rates, workers' comp costs, and disability costs. Disease management programs aren't for every small employer since most programs have a 3- to 5-year return on investment. As a result, employers with a high turnover rate will not benefit. Likewise, disease management may not be appropriate if the company tends to move from one carrier to another every few years.

### **Caution: Don't Go It Alone**

If your organization is contemplating a disease management program, don't try to collect health data from employees yourself. When an employer makes health-related inquiries, employees may get the impression that the company is collecting confidential information. Instead, consider hiring an outside disease management firm and assure your employees that health risk assessment data is completely confidential, and that nobody in HR, or any managers or supervisors, are going to see any of it.

## **Preventing Healthcare Fraud and Related Costs**

Healthcare fraud is a growing problem, one that costs between 5 percent and 10 percent of total healthcare expenditures each year in the United States, according

to experts. Bogus product claims, improper coding on claims, even submitting completely fabricated billings are all part of the problem.

In order to address and prevent healthcare fraud in your workplace, consider the following measures:

**Audit coverage.** One solution to the problem may start right on the desk of benefits professionals. Regularly auditing dependent coverage can weed out anyone who is no longer entitled to coverage due to divorce, age limits, and marriage. Some of these errors may result simply from oversight or lack of knowledge on the part of employees, but whatever the reason, removing those who are not entitled to coverage will save you money.

**Communicate with your provider.** Managers should also discuss fraud with providers. Third-party administrators should be able to articulate exactly what they're doing to prevent fraud. For example, they should have the ability to examine claims for unusual billing codes, such as "upcoding" and "unbundling." Upcoding is the practice of assigning a more-complex billing code to a less-complex procedure. Unbundling is failing to use a code that covers several procedures when coding each procedure separately would net a greater insurance benefit. Third-party administrators should also be able to examine providers to uncover patterns that may reveal improprieties.

**Reward whistleblowers.** One way to help reign in healthcare fraud is to offer incentives to participants. In cases where an employee notices a fraudulent occurrence, you could reward them with a percentage of the amount saved. Employees also need to understand that they are paying the price for fraud through higher insurance costs. Use the opportunity of employee newsletters and company intranet sites to tell them about the problem.

## #2 Compliance Issues

It is a perennial challenge—HR professionals on the quest for information regarding changes in the laws that affect human resources management. The year 2007 is no exception to the rule of quickly changing legal landscapes, new regulatory obligations, and other legal traps set for the unwary.

The compliance challenges discussed below include:

- ◆ Implementation of the EEOC's new EEO-1 Report form in 2007
- ◆ Requirements of the new Pension Protection Act of 2006 (PPA)
- ◆ Effect of the final rules on Health Insurance Portability and Accountability Act (HIPAA) nondiscrimination

### How to Comply with Requirements Of the New EEO-1 Report

The EEO-1 Report—formally known as the "Employer Information Report"—is a government form requiring many employers to provide a count of their employees by job category and then by ethnicity, race, and gender. For the first time in many

years, the Equal Employment Opportunity Commission (EEOC) has substantially revised the EEO-1 Report form. Early in 2006, EEOC announced that substantial changes were made to the race and ethnic categories, as well as the job categories on the form.

EEOC's guidance published with the new EEO-1 Report states that all covered employers must use the new EEO-1 reporting format with the report due in September 2007. However, EEOC has stated that covered employers need not resurvey their workforce in order to complete the EEO-1 Report due in September 2007. As a result, employers will need to use the new EEO-1 Report in 2007, but they will not need to resurvey and report on new race/ethnic categories for their workforce until they begin to prepare for the September 2008 EEO-1.

**Implement changes now, when possible.** Although employers are not required to fully resurvey until the 2008 EEO-1, if employers are able to complete the new EEO-1 Report in 2007, on the basis of their own knowledge of the workforce (i.e., employer can identify employees of two or more races and Hawaiian employees), they may do so. If the employer is not able to fill out the new racial/ethnic categories on the new EEO-1 Report in 2007 without resurveying the workforce, boxes for the new racial/ethnic categories may be left blank. Please note, however, that employers should complete the new EEO-1 data requirements for new manager and other job category types, since this information can be determined without resurveying.

### **Managing the EEO-1 Report's New Job Categories**

One of the substantial changes brought about by the recent changes to the EEO-1 Report is the split in job categories and revision of job category titles. The new job categories are intended to mirror the employer's own well-established hierarchy of management positions. According to EEOC, the new job categories will allow assessment of the extent to which minorities and women have access to power and decision-making jobs in the employer's workforce.

The revised EEO-1 report divides the old EEO-1 category of "Officials and Managers" into *two levels* based on responsibility and influence within the organization. The two levels are:

- 1. Executive/Senior-Level Officials and Managers**—defined as those who plan, direct, and formulate policy, set strategy, and provide overall direction; in larger organizations, within two reporting levels of CEO; *and*
- 2. First/Mid-Level Officials and Managers**—defined as those who direct implementation or operations within specific parameters set by Executive/Senior-Level Officials and Managers, and oversee day-to-day operations.

The revised EEO-1 also moves business and financial occupations from the Officials and Managers category to the Professionals category in order to improve data for analyzing trends in mobility of minorities and women within Officials and Managers.

Each employee must be reported in only one job category. In order to simplify and standardize the method of reporting, all jobs are considered as belonging in one of the broad occupations shown in the EEO-1 reporting table.

**Note:** As mentioned in Step 1, above, employers can identify and reclassify job categories without resurveying. As a result, employers will be expected to provide this new information on the 2007 EEO-1 Report.

## Tracking Race and Ethnicity Category Changes

The new EEO-1 Report increases the previous five race and ethnicity categories to seven categories, as follows:

- ◆ Adds a new category titled “Two or more races”
- ◆ Divides “Asian or Pacific Islander” into two separate categories: “Asian” and “Native Hawaiian or other Pacific Islander”
- ◆ Renames “Black” as “Black or African American”
- ◆ Renames “Hispanic” as “Hispanic or Latino”
- ◆ Strongly endorses self-identification of race and ethnicity categories, as opposed to visual identification by employers

The definitions of the seven new racial classifications are:

- ◆ **Hispanic or Latino**—A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race
- ◆ **White (Not Hispanic or Latino)**—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa
- ◆ **Black or African American (Not Hispanic or Latino)**—A person having origins in any of the black racial groups of Africa
- ◆ **Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino)**—A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands
- ◆ **Asian (Not Hispanic or Latino)**—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam
- ◆ **American Indian or Alaska Native (Not Hispanic or Latino)**—A person having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment
- ◆ **Two or More Races (Not Hispanic or Latino)**—All persons who identify with more than one of the above five races

**The 2-Question format explained.** In order to properly solicit self-identification, employers will need to ask employees first to specify if they are Hispanic or Latino. Employees who respond “No” to the question as to whether they are Hispanic or Latino should then choose one of the six other race/ethnicity categories (i.e., White, Black/African American, Asian, Native Hawaiian/Pacific Islander, American Indian/Alaskan Native, or Two or More Races). This process, called the “2-Question Format,” is endorsed by EEOC as the proper method for determining race and ethnicity categories.

Employees who self-identify as Hispanic or Latino should not be counted in any other race or ethnic category. They should be reported as Hispanic or Latino on the EEO-1 report. If an employee supplies race data, employers must preserve such data as an employment record under 29 CFR Sec. 1602.14.

**Change workforce data systems.** In order to properly manage workforce data to respond to the EEO-1 Report's new race, ethnic, and job categories, employers must revise employee information systems *now* to accommodate the new categories, and review and change job classifications. These changes are especially necessary for the EEO-1 job category that was formerly "Officers and Managers," since the change to two levels is likely to affect most employers. These changes will also most likely require the participation of the employer's IT department (or other departments involved with workforce management), so early notification is vital.

## The Pension Protection Act of 2006

The Pension Protection Act of 2006 (PPA) makes wide-reaching changes to the Internal Revenue Code and the Employee Retirement Income Security Act (ERISA) governing employer-sponsored qualified retirement benefit plans. The PPA was signed into law on Aug. 17, 2006. Some provisions of the Act took effect in 2006, while others will not be effective for years.

### Pension Plan Protection

The legislation aims to strengthen the protection of pension plans. Specifically, the PPA:

- ◆ Provides a permanent interest rate based on a modified "yield curve" for employers to more accurately measure current pension liabilities as they come due.
- ◆ Requires employers to make sufficient contributions to plans in order to meet a 100 percent funding target, phased in over 5 years for companies for plans that are, in general, funded above 90 percent under current law; companies with plans funded below 90 percent must meet the new 100 percent target immediately. The phase-in of the 100 percent target begins in 2007.
- ◆ Requires employers to make additional contributions to erase funding shortfalls over 7 years.
- ◆ Triggers accelerated contributions if a plan's funded status falls below 60 percent, with a 5-year phase-in.
- ◆ Reduces the smoothing of interest rates to protect plans against market and funding volatility.
- ◆ Prohibits employers from using credit balances if their plans are funded at less than 80 percent.
- ◆ Permits employers to make additional maximum deductible contributions of up to 150 percent of current liability.

### Defined Contribution Plans

The PPA also contains provisions to help American workers who save for retirement through defined contribution plans like IRAs and 401(k)s. The legislation:

- ◆ Removes barriers that prevent companies from automatically enrolling their employees in defined contribution plans;
- ◆ Ensures that workers have more information about the performance of their accounts;
- ◆ Provides greater access to professional advice about investing for retirement;

- ◆ Gives workers greater control over how their accounts are invested; *and*
- ◆ Makes permanent the higher contribution limits for IRAs and 401(k)s that were passed in 2001, enabling more workers to build larger retirement nest eggs.

### **Required Disclosure**

Finally, the PPA requires employers to provide specific information/disclosures to employees about the status of their pension plans. The Act:

- ◆ Requires both single and multiemployer plans to include more detailed and specific information on their Form 5500 filings, the equivalent of a pension plan's federal tax return
- ◆ Enhances Form 4010 disclosure requirements and make all Form 4010 information filed with the PBGC available to the public, except for sensitive corporate proprietary information
- ◆ Establishes a 60 percent, at-risk threshold that determines whether plans pose a threat to the PBGC and therefore file 4010 information
- ◆ Allows the PBGC to request pension plan information from an employer in an industry suffering from a substantial business hardship if the plan is less than 75 percent funded
- ◆ Requires both single and multiemployer pension plans to notify workers and retirees of the funded status of their plan within 90 days after the close of the plan year
- ◆ Requires both single and multiemployer pension plans to provide the summary annual report notice to workers and retirees within 15 days of the Form 5500 filing deadline

### **Changes to Plan Structure.**

Under the PPA, organizations have more options for plan structure. In the past, employers and plan sponsors faced restrictive fiduciary regulations that restricted their efforts to advise employees on how to invest their savings—only one-size-fits-all, very general guidance could be given. Now that some employees' investments can be chosen for them, restrictions had to be relaxed. The PPA allows third-party investment advisors to provide individualized financial advice based on goals and lifestyles as well as on age.

Advice can be made available through computer models or from a personal advisor who charges a flat fee. Before the PPA, employers were also saddled with complex "nondiscrimination" formulas meant to ensure as much participation among low- and middle-income employees as by an organization's highly compensated staffers. Under the PPA, employers that provide both autoenrollment and required levels of contribution matches can avoid those restrictions with a "safe harbor" plan. Employers that do not utilize a "safe harbor plan" must still match, but at a level based on the size and demographics of the employer's workforce, which will encourage employees who are not highly compensated to participate.

The PPA is highly complex and touches on a multitude of employer obligations and legal responsibilities. As a result, it is highly advisable for an employer to familiarize itself with the specifics of the PPA as they apply to plans offered by the employer.

## HIPAA Nondiscrimination Rules

The U.S. Department of Labor's Employee Benefits Security Administration (EBSA), the Internal Revenue Service, and the U.S. Department of Health and Human Services have published final rules that provide guidance in complying with the nondiscrimination provisions of HIPAA. The rules will be effective on the first day of the plan year beginning on or after July 1, 2007. For calendar year plans, the new rules generally apply beginning January 1, 2008.

### Health Factors

Under HIPAA's nondiscrimination rules, an individual cannot be denied eligibility for benefits or charged more for coverage because of any health factor. Health factors are:

- ◆ Health status;
- ◆ Medical condition, including both physical and mental illnesses;
- ◆ Claims experience;
- ◆ Receipt of health care;
- ◆ Medical history;
- ◆ Genetic information;
- ◆ Evidence of insurability; *and*
- ◆ Disability.

The term "evidence of insurability" includes conditions arising from acts of domestic violence, as well as participation in activities such as motorcycling, snowmobiling, all-terrain vehicle riding, horseback riding, skiing, and other similar activities.

The nondiscrimination rules specify circumstances under which a group health plan may or may not deny eligibility in the plan, including that no physical examinations are allowed for plan enrollment and that healthcare questionnaires are permitted in order to enroll, provided that the health information is not used to deny, restrict, or delay eligibility or benefits or to determine individual premiums.

### Exclusion for Specific Diseases

Under HIPAA's nondiscrimination rules, group health plans may exclude coverage for a specific disease, limit or exclude benefits for certain types of treatments or drugs, or limit or exclude benefits on the basis of a determination that the benefits are experimental or medically unnecessary—but only if the benefit restriction applies uniformly to all similarly situated individuals and is not directed at individual participants or beneficiaries on the basis of a health factor they may have.

**Note:** Plan amendments that apply to all individuals in a group of similarly situated individuals and that are effective no earlier than the first day of the next plan year after the amendment is adopted are not considered to be directed at individual participants and beneficiaries.

### Source of Injury

If the injury results from a medical condition or an act of domestic violence, a plan may not deny benefits for the injury—if it is an injury the plan would otherwise cover.

For example, a plan may not exclude coverage for self-inflicted injuries (or injuries resulted from attempted suicide) if the individual's injuries are otherwise covered by the plan, and if the injuries are the result of a medical condition (such as depression). However, a plan may exclude coverage for injuries that do not result from a medical condition or domestic violence, such as injuries sustained in high-risk activities (for example, bungee jumping). However, the plan could not exclude an individual from enrollment for coverage because the individual participated in bungee jumping.

## **Effect on Wellness Plans**

The final rules provide guidance on the implementation of wellness programs.

The HIPAA nondiscrimination provisions generally prohibit group health plans from charging similarly situated individuals different premiums or contributions or imposing different deductibles, copayments, or other cost-sharing requirements based on a health factor. However, there is an exception that allows plans to offer wellness programs.

The final regulations specify that wellness programs that condition a reward on an individual satisfying a standard related to a health factor must meet five requirements to comply with HIPAA's nondiscrimination rules.

## **Five Requirements**

The five requirements for wellness programs that base a reward on satisfying a standard related to a health factor are:

1. The total reward for all the plan's wellness programs that require satisfaction of a standard related to a health factor is limited; generally, it must not exceed 20 percent of the cost of employee-only coverage under the plan. If dependents (such as spouses and/or dependent children) may participate in the wellness program, the reward must not exceed 20 percent of the cost of the coverage in which an employee and any dependents are enrolled.
2. The program must be reasonably designed to promote health and prevent disease.
3. The program must give individuals eligible to participate the opportunity to qualify for the reward at least once per year.
4. The reward must be available to all similarly situated individuals. The program must allow a reasonable alternative standard (or waiver of initial standard) for obtaining the reward to any individual for whom it is unreasonably difficult because of a medical condition, or medically inadvisable, to satisfy the initial standard.
5. The plan must disclose in all materials describing the terms of the program the availability of a reasonable alternative standard (or the possibility of a waiver of the initial standard).

## **Wellness Programs That Comply**

Under the final regulations, examples of wellness programs that comply with HIPAA's nondiscrimination requirements without having to satisfy the additional standards (assuming participation in the program is made available to all similarly situated individuals) include:

- ◆ A program that reimburses all or part of the cost for memberships in a fitness center
- ◆ A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes
- ◆ A program that encourages preventive care through the waiver of the copayment or deductible requirement under a group health plan for the costs of, for example, prenatal care or well-baby visits
- ◆ A program that reimburses employees for the costs of smoking cessation programs without regard to whether the employee quits smoking
- ◆ A program that provides a reward to employees for attending a monthly health education seminar

**Note:** EBSA has issued updated frequently asked questions (FAQs) on HIPAA's nondiscrimination requirements to assist the employee benefit community in complying with the new rules. Some of those FAQs are cited, above. The full library of FAQs can be found at [www.dol.gov/ebsa/faqs/faq\\_hipaa\\_ND.html](http://www.dol.gov/ebsa/faqs/faq_hipaa_ND.html).

## #3 Technology, Security, and Legal Liability

Internet use, cell phones, picture phones, blogging, and identity theft—just a few years ago, most employers did not consider these to be “workplace” issues to be addressed in company policies and practices. However, in 2007 employers would be well advised to consider how each of these “state-of-the-art” technologies affects their workplace and to create specific policies or adopt new practices when appropriate.

### Internet Use

The Internet is an extremely valuable search-and-retrieval tool that offers information and research material to employees from their desktop computers. However, employers are justifiably concerned about potential legal exposure and losses in productivity among employees who spend too much time “surfing” non-business-related areas on the Internet. In order to prevent use of e-mail records in legal proceedings and excessive non-business related Internet use, a clearly worded policy should be put in place.

### Best Practice: Internet Policy Planning

Points to consider when formulating an Internet use policy generally include:

**Notice.** Inform employees that their individual Internet activities (website hits, downloading files, printing files) may be automatically logged by a network surveillance system and later reviewed by your system administrator for legitimate business purposes.

**Inappropriate use.** Remind employees that when they browse the Internet, or send e-mail containing the company's domain address, they are representing the company—not merely themselves—in a public medium. Employees who send out abrasive, harassing, or discriminatory e-mail messages or news group postings or who visit inappropriate websites are subject to discipline. Your Internet policy should be coordinated with other company policies establishing proper standards of employee conduct and prohibiting harassment or other forms of offensive and/or unethical behavior by employees. Under no circumstances should an employee's use of the Internet compromise the legitimate business interests of the company or result in illegal activity.

**Limiting access.** If necessary to prevent abuses, install monitoring and filtering software to block out or curtail access to specific websites or newsgroups.

**Copyright.** With the use of the Internet comes the proliferation of data. Some of this data may be copyrighted by others. You should establish a policy to periodically review your system to identify any illegal copyrighted items.

**System integrity.** Will you permit software and documents to be downloaded from the Internet, and if so, will there be a system in place to automatically scan downloads for viruses? Will you have a "firewall" in place to protect trade secrets and confidential information from data corruption or hacking? Will you require employees to encrypt documents they send via the Internet?

**Business use of Internet.** If you use the Internet to reach your clients or customers—such as maintaining your own website to promote your products—do you require employees to monitor activity on your site or to update the material according to a set schedule?

**Note:** Defamatory employee postings on the company home page should be included as grounds for dismissal.

## Electronic Records and Litigation

Recent changes to the Federal Rules of Civil Procedure (FRCP), the rules governing federal litigation, now require lawyers to meet at the outset of a case and to discuss "any issues relating to the disclosure or discovery of electronically stored information, including the form or forms in which it should be produced" (FRCP, Rule 26(f)). In this meeting between the lawyers, the lawyers should discuss specific databases that may contain discoverable information, the way in which the database can be searched, whether the databases can be searched in a cost-effective manner, and any issues regarding preservation of data during the litigation of the case.

This change to the FRCP will have significant effects on employers and measures that should be taken to manage, store and save electronic records. In order to prepare for and guard against potential litigation, employers should establish protocol for storing and identifying relevant databases, as well as procedures for isolating and "freezing" electronic records to isolate them from a larger database and prevent deletion. Records that may be requested in electronic searches include e-mail, on-line calendars, faxes, voice mail, Word documents, spreadsheets, videos, deleted items, archived data and e-mail, PowerPoint® presentations, scanned images, and instant messages.

## Cell Phones

Cell phones have become a valuable tool in conducting business as more employees are using them to perform their jobs. Among other things, they help boost productivity by keeping employees connected to the office and to clients. However, cell phones also raise a number of issues involving safety, security, and privacy.

For employers, there are liability issues. For example, if an employee has an auto accident and harms someone while making a work-related cell phone call, the employer as well as the employee may be found liable. Several lawsuits have been filed against employers as well as the employees themselves who have harmed someone allegedly because of cell phone use while driving and doing business at the same time.

The best advice for employers is to check state and local laws and to instruct employees in writing not to use cell phones while driving. They should also be instructed that if they receive a cell phone call, they should let voice mail answer it and/or call back when they can stop at a safe area.

If employees must use cell phones while in their cars, the following safety guidelines may help:

- ◆ Always dial while the car isn't moving.
- ◆ Never use the phone in heavy traffic or bad weather.
- ◆ Use speed dialing as much as possible.
- ◆ Use a hands-free phone.
- ◆ Never look up phone numbers while driving.
- ◆ Never have stressful conversations while driving.
- ◆ Keep your eyes on the road while on the phone.

## Camera Phones

Security and privacy are also the most commonly cited potential risks of camera phones. Camera phones can be used to capture and send images of confidential company documents. If trade secrets can be easily photographed, then the company may not be able to assert that it maintained the information in confidentiality and may not be able to claim that the information is a trade secret.

Some alarmists say employee ability to access confidential and proprietary information via camera phones is a significant risk. Others point out that the dangers are no different than access via other means (e.g. computers, intranets, paper documents, etc.). Therefore, the first step in dealing with consumer technology in the workplace is to be sure your organization already has a strong confidentiality policy that is effectively monitored and communicated. For example, experts say that all sensitive information should always be visibly marked as "confidential," "company private," or both, regardless of the format in which it's published.

As an extra precaution, some companies require departing employees to sign a statement acknowledging that customer data and other proprietary information is the property of the company and may not be reproduced or used by any unauthorized individual or entity.

In some cases, it may be prudent to ban certain high-tech tools from the workplace.

**Note:** Camera phones may also be used to send sexually suggestive images, which may in turn lead to claims of sexual harassment or invasion of privacy, therefore controlling their use in the workplace is recommended.

## Best Practice: Camera Phone Policy Planning

Points to consider when formulating a camera phone policy include:

- ◆ **Areas.** Identify the areas where cameras are forbidden. To which locations inside the facility should the policy apply? Research and development? Human Resources? Medical records? Bathrooms?
- ◆ **Equipment.** What equipment is covered? Will the policy apply to camera phones only? To camcorders? To video equipment? To all cameras? To hand-held scanners? To flash drives? To flash memory cards?
- ◆ **Ownership.** State if you claim any ownership of images taken with company equipment or on company premises.
- ◆ **Related policies.** Consider referencing other policies like confidentiality, investigations, security, privacy and harassment. For example, can the company use hidden cameras to investigate suspected wrongdoing? Are parking lots under video surveillance to provide security?
- ◆ **Enforcement.** Who will enforce the policy? Human Resources? Security? Supervisors? All of the above? Will you confiscate banned images?
- ◆ **Exceptions.** Will you permit exceptions for the “no camera” policy? Can visitors bring cameras with permission? Can employees use cameras for celebrations?
- ◆ **Discipline.** Will you fire employees who violate this policy? Will you confiscate banned images? Will you confiscate banned equipment?

## Blogging

A blog (short for “Web log”) is an online journal where the writer posts his or her opinions on the Internet about any topic—including the workplace. Blogging has grown quickly in recent years both with regard to the number of individuals reading and posting to blogs and the number of blogs available on the Internet. There have been a number of highly publicized cases in which employees were disciplined or fired for disclosing confidential or proprietary information about their companies and/or describing their employers in an unflattering light.

## Best Practice: Blogging Policy Planning

Points to consider when formulating a blogging policy include:

- ◆ **Confidentiality.** Describe what obligations employees have to maintain the company’s and customers’ proprietary information in confidence (including existing policies, contracts, and laws regulating confidential information).
- ◆ **Respect of dignity.** Include a statement that the weblogger should respect the dignity of others and refrain from posting personal information about or pictures of co-workers, supervisors, or managers.
- ◆ **Competitors.** Can employees use a blog to tout your competitors? Criticize your competitors? Disparage your competitors? Defame your competitors?

- ◆ **Identification.** Are employees permitted to reference the company in their blog entries? If yes, employees should be asked to include a disclaimer stating that the blog posting represents their personal opinion and not the official position of the company.
- ◆ **Business developments/ideas.** If you require employees to disclose all business developments or ideas that are within the scope of the company's business, then include that statement in this policy.
- ◆ **Media.** Can employees comment to the media about the company's business or about customers? Can they publicly criticize customers? Vendors? Co-workers? Supervisors or managers? The company?
- ◆ **Facilities.** Can employees use company facilities to develop, design and maintain their websites/blogs? Are employees permitted to read and post messages to blogs during work time or from the workplace?
- ◆ **Links.** Can employees link to the company's website? The websites of customers or vendors?
- ◆ **Monitoring.** State that the company monitors its facilities (e.g., internet, computer systems, networks, etc.) for compliance with this policy and monitors the use of its name and trademarks on the Internet.
- ◆ **Deleting.** State that the company will delete from its website, files, computer systems, and storage media any unauthorized materials it may find, at any time and without notice.
- ◆ **Correlate with other policies.** Include references to related policies such as computer and internet use policies, confidentiality, duty of loyalty, media, harassment, proprietary rights, copyright, and the like.
- ◆ **Discipline.** What discipline will be imposed if the employee violates the policy? Generally, employers should reserve the right to decide the appropriate level of discipline in any given circumstance up to and including the immediate termination of employment.

## Identity Theft

In recent years, 9.3 million Americans—or one in every 25 adults—were victims of identity theft, according to a report by the Better Business Bureau and Javelin Research. The Federal Trade Commission (FTC) estimated that identity theft crimes tallied \$52.6 billion in fraud that year, or almost \$200 for every man, woman, and child in the U.S. Identity theft has been the fastest growing crime in the US for the past 3 years, according to the FTC, which predicts that in 5 years, the majority of Americans will have been victimized by identity theft.

Much of the identity theft that occurs in the workplace happens when employees steal personal information of the company's co-workers, customers, or clients via their employer's computer system. Identity theft also threatens enterprise security, enabling corporate espionage and fraud, and theft of hard assets and intellectual property. Large scale or frequent identity thefts also results in significant negative publicity, impacting sales, partnerships, and employee recruiting and retention. Therefore, employers need to carefully control access to employee and customer financial information (via password protection); carefully control the transfer of such information; and carefully control the destruction/recycling of company documents.

Employers also suffer other significant costs when their employees experience identity theft. Conservative calculations based on current identity theft figures indicate that an employer with 1000 employees, who make an average of \$40,000 salary per year, should expect to incur productivity losses of more than \$600,000 per year.

Employers who are concerned about identity theft hire outside consultants to perform a “penetration test” to assess the security of their computer systems. Such consultants will try to hack into your computer system (and will most likely succeed) and in doing so will discover your weak points and can help you to fix them.

## **Identity Theft Law Requires Employer Compliance**

A provision of the Fair Access to Credit Transactions Act (FACTA) states that any employer whose action or inaction results in the loss of employee information can be fined by federal and state government, and sued in civil court. An employee is entitled to recover actual damages sustained if their identity is stolen due to the employer’s inaction, or statutory damages up to \$1,000. Employees may also bring class-action suits against employers for actual and punitive damages. In addition, federal fines of up to \$2,500 per employee, and state fines of up to \$1,000 per employee also may be levied.

## **Protection as an Employee Benefit**

One solution that provides an affirmative defense against potential fines, fees, and lawsuits is to offer some sort of identity theft protection as an employee benefit. An employer can choose whether or not to pay for this benefit. The key is to make the protection available, and have a mandatory employee meeting on identity theft and the protection you are making available, similar to what most employers do for health insurance.

## **Best Practice: How to Protect Your Employees And Your Company from ID Theft**

When choosing the best alternative for protecting your employees and your company from identity theft, consider the four types of protection available:

- ◆ **Computer protection.** Anti-virus, anti-spyware, wireless security, etc.
- ◆ **Guidance on protecting against a variety of exposures of personal data** from shredding documents, to opting out of marketing databases, to tracking data in Social Security, driving, medical, and financial databases
- ◆ **Credit monitoring** at varying levels of frequency, sometimes with alert services in the event of credit inquiries or changes
- ◆ **Insurance coverage**, sometimes including assistance with identity recovery activities

## **Balance Employees’ Privacy Concerns And Your Needs**

A common theme to all of the “state of the art” issues discussed above is the balance between a company’s interest in operating a profitable and safe workplace, and the employee’s interest in maintaining his or her privacy in an increasingly public world.

When formulating policies that balance the employers interest with the employee's interest in privacy, consider the following suggestions:

Create appropriate notifications to employees about what you will monitor and when you will have the right to search or conduct surveillance. Disseminate your policies frequently, to reduce employees' expectations of privacy.

Tell employees specifically how you will protect their personal health information.

Adopt a 'minimum necessary' standard for monitoring, searching, or collecting medical information. Avoid using a baseball bat if a flyswatter would accomplish what you want. If you're concerned only about computer visits to porn sites, say so, and don't penalize people who shop online unless you note low productivity.

Implement other safeguards, beyond those for personal health information, to protect personal information such as Social Security numbers, home addresses, and other data that can be used in identity theft.

Train your supervisors and managers to abide carefully by your privacy policies. For example, remind them not to disclose a subordinate's medical condition to co-workers or other supervisors without the employee's express permission. Tell them to ask HR and or legal counsel if questions arise.

Review not only federal privacy protections but also, more importantly, the laws particular to the states where you do business.

## #4 Hiring and Retention

Hiring and keeping good employees is not only important to business—it's essential. Population statistics tell us that the workforce is aging and that there are fewer men and women in the younger generation to take the place of experienced, retiring Baby Boomers. For HR professionals, this means the race to locate, hire, and retain qualified employees is on.

As your organization prepares to address staffing needs in the coming year, consider the following steps to effective and efficient hiring and retention.

### **Developing a Hiring Strategy**

Hiring should not be an issue that you think about only on the day that an employee gives notice and you are faced with the immediate need to fill his or her position. Particularly in a tight labor market, attracting and retaining top talent requires a thoroughly thought out hiring strategy that is tailored to the individual characteristics and needs of your company.

### **Match Your Strategy to Your Company**

Before deciding what approach to hiring will work best for you, consider who you are as a company. For example, what is your overall approach to company growth? Are you looking to expand or merely to fill existing positions as they become vacant? Are you a rapidly growing company that can offer frequent advancement

opportunities as operations expand? Such companies often benefit from hiring strategies that focus on finding employees at the entry level with potential and willingness to learn the business and develop necessary skills and then training and promoting from within. Such a strategy allows the company to hire employees at the entry level, where costs are lowest, and develop and tailor their skills to company needs over time. On the other hand, a company that grows slowly and therefore cannot offer as many advancement opportunities is better served by a strategy that relies more heavily on outside talent at all levels.

### **Determine What You Are Looking for in a Candidate**

As a part of your overall hiring strategy, you may want to take a look at each of your company's job classifications and determine what makes a person a good candidate for that job. Go beyond essential job functions and consider the background and inherent characteristics that are likely to equip a person best to perform the job. You may wish to look at existing and past employees who have performed best in the job at issue, and determine what was responsible for their success as part of coming up with your own detailed profile of the ideal candidate. Be very careful, however, to be sure that your profile does not include, either directly or indirectly, any characteristics that might be viewed as discriminatory.

### **Develop a Budget**

Before embarking on a hiring effort, consider the cost involved, and decide how much you are prepared to spend. Ideally, HR and management should work together in planning an annual budget for hiring efforts. Consider the amount of hiring you project will be necessary to fill your needs, the hiring tools that are most likely to be successful, and the average or projected cost of each.

### **Choose Your Hiring Tools**

There are innumerable sources that can be used for locating qualified applicants. When hiring for a particular job, it is important to match the hiring tool(s) you use to the job being filled; for example, it does not make sense to use a costly professional search firm to fill an entry-level position in building maintenance, nor does it make sense to use the Internet to fill a position if the types of applicants you are seeking are not likely to be heavy computer users.

In determining which hiring tools will work best for you, consider the following:

**Cost.** Display ads in high-circulation daily newspapers can run in the thousands of dollars. Before deciding to use one, consider whether there might be other less expensive tools that might work as well and whether you have the time to try other recruitment sources before using an expensive one.

**Time constraints.** Outplacement firms can fill positions for you almost instantly, but they are very costly. If you have an immediate, unexpected opening in an essential position that the company cannot afford to have vacant for any period of time, it may be worth the money to use the tool that will fill it most expediently.

**Availability of qualified applicants.** Are you filling a position for which very specialized skills are required or a position for which a large number of qualified applicants exist in the general marketplace? Highly skilled positions may be better filled through trade association contacts (or in the case of computer trades, the Internet) than help wanted ads in the Sunday paper.

Once the hire has been made, how should an employer measure their recruiting success? Consider the recruiting strategy of Texas Instruments:

## Best Practice: Measuring Your Recruiting Success

Measuring the results of recruiting efforts is the best way to determine the success of a recruiting program, according to Texas Instruments (TI). Not only does the company track traditional measures, such as hiring cycle time and cost-to-hire, to ensure productivity, it also uses a quality-of-hire metric to determine whether it's getting the right talent for the right job.

Four months after an employee is hired at TI, his or her manager is asked to rate the employee (as part of a survey) on whether the person is "meeting," "not meeting," or "exceeding" the manager's expectations. Currently, TI managers report that 97 percent of their new hires are exceeding expectations. New employees are also surveyed to see if the job they are performing is what they had expected.

### TI's Recruiting Strategy

After extensive research and planning, the TI staffing organization identified five major processes for its recruiting strategy:

**People planning.** HR partners with Finance at a business-group level to evaluate how many and what type of positions will need to be filled in a given time frame (typically four quarters out) and to ensure that the business group's financial plan will support its hiring plan.

**Developing performance profiles.** These extensive versions of job descriptions focus not just on what the job entails, but also on what needs to be accomplished by a person in that position, and what the job expectations are.

**Centralized sourcing.** An HR team at TI's Dallas headquarters is constantly on the lookout for new talent. The team partners with search firms to keep the talent pipeline moving. TI also relies heavily on its employee referral program, and it pays a cash incentive to employees upon hire of their referral. Approximately 50 percent of hires are referred by employees.

**Business-specific recruiting.** TI has recruiters dedicated to each of its major businesses in the United States. These recruiters work directly with hiring managers to land the candidates.

**Assessment and selection.** The company uses team-based interviews to select the best job candidates. Interviewers ask both behavioral questions (e.g., how the candidate would approach something from an interpersonal communications perspective) and technical questions (e.g., how he or she would solve a technology or process issue).

## Retention: Top Concern of HR Professionals

Once an employer has hired a quality employee—how do they keep him or her on board? Nearly half of 1,000 HR professionals report that retaining workers is their biggest concern regarding "the bottom-line profitability" of their company, according to a survey by Express Personnel Services.

Why are the great employees leaving? Seventy-one percent of top-performing employees say pay is one of the top three reasons they would leave an organization, but only 45 percent of employers cite pay as a top retention issue, according to a survey by Watson Wyatt Worldwide and WorldatWork. What do employers believe? Employers were more likely to cite promotion opportunities (68 percent) and career development (66 percent) as one of the top three reasons top-performing employees leave.

### **Bonuses Gaining Popularity for Retention**

While base-pay increases remain modest, employers are increasingly relying on bonuses for attracting, motivating, and retaining talent, according to a survey by Hewitt Associates. Eighty percent of respondents to Hewitt's survey of 1,028 large organizations offer at least one type of broad-based variable pay plan, up from 51 percent in 1991.

Sixty-three percent of respondents offer special recognition awards, which acknowledge individual or group achievements with small cash awards or merchandise. Sixty-two percent of respondents offer business incentives, the same percentage of companies that said they offer signing bonuses. Forty-four percent of the companies offer individual performance awards, the same percentage of companies that said they offer nonexecutive equity awards. Thirty-five percent of companies said they offer retention bonuses.

The survey found that respondents forecast that spending on variable pay as a percentage of payroll will be 11.0 percent in 2007. Hewitt's survey found that executive employees can expect base salary increases of 3.8 percent next year, compared with 3.7 percent for salaried exempt employees, 3.6 percent for salaried nonexempt employees and nonunion hourly employees, and 3.3 percent for union employees.

### **Competitive Benefits Crucial for Retention**

In order to combat the loss of employees, employers must focus on meaningful, competitive benefits that make employees want to stay for more.

Just offering competitive benefits is not enough for employers that are aiming to retain talented employees. Employers must also communicate with employees, showing them the value of those benefits and the company that provides them to the individual. Many employees have no concept of what employers are paying in terms of employee benefits and healthcare costs. In order to effectively communicate the value of those benefits, employers should use benefits "report cards" or other type of benefits summary.

Aside from the many types of cafeteria health plans employers can offer in order to be competitive (including Flexible Spending Accounts and Health Savings Accounts), employers can also offer wellness programs (physicals, periodic health assessments, tobacco cessation, obesity programs, etc.), recognition through rewards and incentives, professional development and training, coverage of employees' job-related moving expenses, and much more. No-cost rewards such as offering flextime or job-share programs are another way to treat employees in a way that make them feel valuable.

## **Train Bad Managers to Boost Retention**

It is often said that “people quit managers, not companies.” In order to combat the loss of employees caused by bad managers, employers must enact long-term, sustainable, behavioral change in those managers.

An employee’s relationship with his or her immediate supervisor is the #1 determining factor of whether the employee will stay and how productive he or she will be. When a company learns that employee morale is low, the first reaction is often to conduct leadership training among managers. While this is a good first step, often the training simply isn’t adequate. There is usually not enough opportunity for managers to practice the skills they’ve learned, and once they are thrown back into the “real world” of their jobs, they will instinctively react the way they always have rather than implement newly learned leadership skills.

Another component to successful behavioral change is to hold the manager accountable for the success of the training. If participants know that they are going to be held accountable, they don’t treat training as “a day off” from work, but are instead highly motivated to acquire and use the skills taught.

## **Best Practice: Educational Support, Recognition Lets Employees Achieve, Excel**

Employee recognition and a competitive benefits program are important to the success of any organization. However, those characteristics don’t mean much unless the leadership has developed an operational structure that challenges and supports employees to be the best they can be at their work.

At Medical City Dallas (MCD), a 660-bed acute-care facility that is the flagship hospital of the HCA North Texas healthcare system, five indicators of success were developed to measure the performance of departments and individuals:

1. Employee pride
2. Financial accountability and success
3. Patient satisfaction
4. Physician satisfaction
5. Community awareness

At MCD, a debate began within the senior leadership team as to how to best drive those indicators. The decision was made to focus on top-down implementation of investment in leadership development to support the challenge of meeting the newly created five indicators of success organizationwide.

Leadership development takes many forms at MCD. Some management team members, from the senior leadership team, middle management, and supervisory ranks are working on attaining bachelor’s degrees beyond their nursing school diplomas, master’s degrees for those who already have their bachelor’s, and even doctoral degrees.

## **Continuing Education**

Another initiative is Medical City Dallas University, a curriculum that includes monthly, 4-hour training programs covering topics such as stress reduction, conflict

resolution, diversity, staffing, and acquiring capital. Medical City Dallas University recently held its fall retreat that included a state of the union [hospital] address for staff. The address was used to roll out the 2007 business plan, with the vision and theme, “Our city has no limits.”

Every Tuesday, the university chancellor spends an hour in a different department from 9 to 10 a.m. to learn more about the department. And every day, between 9 and 10 a.m., 30 individuals in management conduct rounds with patients, doctors, or staff, to better understand employees’ roles and needs so that they can be met.

MCD management has also participated in the advisory board’s leadership development program in Washington, DC, sending managers and leaders who expressed interest, and who were ultimately selected by the VP of HR and chancellor to attend. Guest lectures are invited to give new insights into leadership.

## #5 Ethics

Human Resources professionals have an important responsibility when it comes to help a company achieve and maintain high ethical standards. Ethics responsibilities are both practical and legal. And failing to comply with either type of ethical responsibility can have devastating repercussions. In order to create an ethical workplace, employers should consider taking the following measures.

### **Establish a Code of Ethics**

For senior management and HR executives of many small companies, it may seem a formidable task to undertake the development of a code of ethics. However, constructing one may have long lasting, positive effects on the business culture in your organization. It may also enhance your employees’ dedication and commitment to their work and positively influence their behavior in the workplace.

A code of ethics illustrates for customers, employees, and the community your organization’s expectations for corporate conduct. The code of ethics becomes the game plan from which employees can develop appropriate business strategies, and managers can implement work policies and procedures.

### **Getting Started**

The basis for the code of ethics should be the standard to which the organization aspires to reach and wishes to be measured against. For example:

*“Our organization will put its customers first in respect to both service and the quality of the products that we sell.”*

A code of ethics can be specific—denoting purposeful, detailed statements requiring adherence on the part of management and employees. Or, it can be more general. For example:

*“We will respect every customer and every employee as a valued and equal individual with whom we interact every*

*day, regardless of the rank of the employee or the amount of the customer's business that we can expect to fulfill. We will stand behind the quality and value of the products that we produce and will be honest and forthright in our communication with customers, employees, and the community."*

One helpful resource that can be used by employers in developing their own code of ethics was developed by the U.S. Department of Commerce nearly a decade ago. This document encourages businesses to "adopt a code of conduct for doing business around the world." The basic principles suggested by the Department were the following:

- ◆ Provision of a safe and healthy workplace
- ◆ Fair employment practices, including avoidance of any type of discrimination
- ◆ A maintained responsibility for environmental protection and practices
- ◆ Compliance with laws promoting good business practices and ensuring fair competition
- ◆ Maintenance of a corporate culture that respects free expression consistent with legitimate business concerns and does not condone political coercion in the workplace; that encourages good corporate citizenship and makes a positive contribution to the communities in which the company operates; and where ethical conduct is recognized, valued, and exemplified by all employees

### **Promoting the Code**

The CEO may introduce the new company code of ethics with great fanfare to all staff at an employee meeting, and HR may post it in prominent areas throughout the firm's location(s). After the initial introduction of the code, it should be presented to all new employees during employee orientation, or even to employment candidates during the recruitment and interviewing process. Senior management should require that each employee review the code of ethics and sign a statement that requires him to agree to follow the code.

### **Reviewing the Code**

Once a code of ethics has been put into place, HR executives and senior leadership should review the code on an annual basis and solicit employee feedback with a mechanism such as an anonymous employee survey or discussion facilitated by an outside objective resource. Such practices allow employees to share their experiences with adhering to the code of ethics and their observation of other employees and managers regarding their ethical behavior.

Adjustments and changes to the code may be implemented as necessary to reflect any changes in the firm's structure, business strategies, or in response to changes in the business environment. In addition, regular conversation about the code should be commonplace in department meetings and ongoing employee training. A code of ethics should not be a statement that is developed and put on the shelf. It should become a living document that is followed every day.

## Other Statements on Ethics

In addition to an ethical code, employers may wish to integrate ethics standards into other company messages and policies. The following are some other ethical messages your company might want to communicate in company publications, handbooks, and training and orientation sessions:

- ◆ All company stakeholders (employees, management, stockholders, vendors, etc.) share the common goal of delivering the highest quality product or service on time and on budget.
- ◆ Individuals are responsible and accountable for their actions and behavior as they relate to colleagues and the organization as a whole.
- ◆ Fairness is a company focus requiring commitment and cooperation among all interest groups.
- ◆ Illegal, immoral, and questionable behavior in the workplace will not be tolerated.
- ◆ Good manners and respect for all other employees and customers are expected *at all times*.

It is important to note that just saying that the company is committed to high ethical standards isn't enough; the standards must be communicated frequently, clearly, and consistently.

## Best Practice: Creating an Ethical Code That Works

In an effort to establish and enforce a Code of Conduct, Abbott established its Office of Ethics and Compliance (Office) and formalized its policies and procedures related to ethics. The Office's primary function is to provide guidance and train employees about the company's ethical standards and its expectations of employees. The Code of Business Conduct is a brief statement of principles that articulates the company's core values, key compliance requirements (in summary form), and a framework for ethical decision-making. It is the fundamental document from which the Office of Ethics and Compliance works.

The ethical standards set at Abbott Laboratory's Code of Business Conduct apply to all employees—regardless of their level, and the company encourages all employees to ask questions about the code and to raise any potential violations of it.

The key to the Code is encouraging an open environment where employees feel comfortable bringing questions and concerns forward and getting help. It is clear that Abbott has accomplished the goal of employee comfort. Although callers to the company's Ethics and Compliance Helpline are not required to give their names, only about 16 percent of callers request anonymity.

### Getting the Word Out

Every new hire receives the code, and it is distributed annually to all 60,000-plus Abbott employees worldwide. In the past, the company distributed paper copies, but this year, it will start using a 20-minute CD-ROM program that provides an overview of the code and allows employees to certify electronically that they have read the code, that they understand it, and that they will abide by it, according to Brock.

Abbott also provides both in-person and computer-based ethics and compliance training through its legal division, human resources, and the office of ethics and compliance. Managers above a certain grade level and all sales and marketing personnel in the United States and Puerto Rico must complete certain training modules, including the Web-based Legal and Ethics Resource Network. Employees are given a schedule for completing the training, but they can decide what day and time they'll take the required courses.

## How the Process Works

When employees have a question or want to report possible unethical conduct, they have several channels available to them. They can contact their supervisor, another manager, HR, Abbott's legal department, or the Office, or they can call the Ethics and Compliance Helpline, which is managed by an internal administrator with the assistance of an outside vendor. The company also offers an online method for employees to ask questions or report possible unethical behavior.

No matter how a question or report is submitted, the same procedures are followed for handling the issue. All questions and reports are forwarded to the director of internal investigations in the Office, who logs them into a database and directs them to the appropriate department for handling and resolution.

## Making an Ethics Code Better—What You Can Do

Want to strengthen your company's code of ethics? Consider the following tips:

**Hire the right employees; train them for excellence.** During interviews, ask applicants to explain how they handled a situation in which pressures were put on them to do something that wasn't consistent with their sense of right and wrong. Not only will this help you measure an applicant's integrity, it will also send a message to the applicant that ethics is a high priority in your company. Once hired, ongoing ethics training is essential to ensure that employees' integrity does not falter.

**Communicate an unyielding commitment to integrity.** Top management should ask what is being done by departments and divisions to maintain a high level of awareness of ethical standards.

**Model ethical practice.** If leaders don't practice what they preach, workers will develop a cynical attitude about the company's efforts to promote integrity in the workplace.

**Establish a transparent culture.** Executives should be open and available to employees and should conduct business as if every conversation is being taped or will be published in a newspaper the next day.

**Do not tolerate deception.** Do not tolerate the "little things." If you do, before you know it, you're falling down a slippery slope.

**Share openly the state of all internal operations.** Self-audits of a company's books should be done by an audit committee that is free of any possible conflicts of interest.

**Encourage and reward honesty.** Employees who exemplify a company's values, including high ethical standards, should be recognized for their efforts.

**Look at the big picture.** Always consider the impact of your work on the well being of society and the environment.

## **Does Your Ethics Policy Comply With the Sarbanes-Oxley Act?**

The Sarbanes-Oxley Act (SOX) was adopted in the wake of the Enron, WorldCom, and other corporate scandals, as well as reforms led by the New York Stock Exchange. Section 406 of the Act specifically addresses corporate codes of ethics and disclosure requirements in corporations.

Under Section 406, public companies are required to disclose whether they have a code of ethics and whether they have granted any waivers for certain senior executives. They also must file their code of ethics as an exhibit in their annual report or on their website and provide a free copy on request, she says. If a covered company does not have an ethics code, it must explain why.

### **Legal Requirements for Ethics Policies**

A directive in SOX also required that the U.S. Sentencing Commission amend the Federal Sentencing Guidelines. Those amendments, which went into effect in November 2004, specify seven requirements for ethics policies that apply to public, private, and not-for-profit companies. A company facing criminal penalties as a result of financial corruption would likely face smaller penalties if it has met the seven requirements.

The seven requirements are as follows:

1. Establishing ethics compliance standards and procedures.
2. Assigning a specific high-level person to oversee the compliance program.
3. Taking due care in the delegation of substantial discretionary authority to individuals (i.e., being careful to select an objective, high-level person to investigate any violations.)
4. Communicating standards and procedures to all employees through training and through printed and electronic materials.
5. Monitoring and auditing the operation of the compliance program, and establishing a help line to report possible wrongdoings.
6. Consistently enforcing the discipline of employee violations.
7. Responding promptly to any wrongdoing and remedying any deficiencies.

### **SOX and Whistleblowers**

SOX provides employees of publicly held companies the opportunity to file a complaint if an employer retaliates against them for reporting suspected corporate fraud or other activities related to fraud against shareholders. If it is found that an employee's complaint has merit, the employee can win reinstatement and back pay.

If you are a human resources professional at a publicly held company, you should familiarize yourself with SOX's provisions and evaluate your company's policies and complaint procedures, in order to avoid potential exposure to monetary and criminal liability.

## #6 Crisis Management

Sometimes it's a hurricane or a flood, and the entire country—even the world—mobilizes to help. Other times, it's just you and your family, or your office. Whether the catastrophe is large or small, *planning* is the key to survival, for your family and for your business. The Hurricane Katrina disaster and the threat of an Avian flu pandemic raised the profile of emergency planning for all us, no matter where we're located.

Human Resources' contingency planning for disasters, big and small, should not neglect any of three main HR areas: compensation issues, benefits issues, and personal issues. When considering whether your organization is prepared, ask yourself the following questions:

### Compensation Questions

- ◆ Will you pay staffers that cannot work or who have evacuated?
- ◆ If so, do you pay working staff more?
- ◆ Will you pay overtime to salaried workers involved in cleanup?

### Benefits Questions

- ◆ Do your vendors have disaster plans?
- ◆ What are they?

### Work/Life Questions

- ◆ Can employees submit claims without documentation?
- ◆ Are employees prepared?
- ◆ Can you contact your employees?

## Preparing an Emergency Plan

Here are some guidelines for developing an effective emergency plan:

- ◆ **Access potential emergencies in your facility.** Do a walkthrough to honestly evaluate what could happen in your workplace under different scenarios.
- ◆ **Predict and prepare.** Take as many practical precautions as possible. For example, if the business is in an earthquake-prone area, strap and otherwise secure furniture, files, or machinery to the walls or foundations of your workplace. In a flood plain, keep machinery on upper floors if at all possible. Maintain backup generators and cellular phones outside of the workplace. Whatever the potential problems, try to protect against them.
- ◆ **Be involved.** While you can hire a consultant to help with disaster planning, you must involve your managers and employees so that the plan addresses the specific needs and problems of your facility.
- ◆ **Designate emergency services.** Investigate what local counties, municipalities, and state agencies have in the way of emergency services that you could contact for help in an emergency and include them in your written emergency plan.

- ◆ **Compile and include contact information.** Employers should post, prominently, the names and regular job titles of people who may be contacted for further information or explanation of duties under the plan.
- ◆ **Address emergency data backup.** Ensure that all computer material is backed up regularly and stored offsite. If your data is manual, store duplicates of vital records and essential documents out of the facility. Keep essential papers such as lists of employees' relatives to be notified in case of emergency and vital accounting records in a protected location within the building.
- ◆ **Plan for shutdown.** Include instructions for shutting down machines and stopping all processes.
- ◆ **Communicate.** The plan needs to cover all the bases—but also able to be simplified so that it can be reviewed quickly. Reduce the written plan to an outline, post it, and distribute it to all employees with instructions to keep a copy in their wallet or purse. A copy on the office shelf will be useless if the office has to be evacuated.

## Best Practice: When Katrina Struck, This Corporation Was Prepared

Devastation in the form of a natural disaster such as a hurricane leaves many corporate leaders reeling, since their organizations are ill prepared. Regions Bank, however, has met the challenge several times.

Hurricane Katrina affected roughly 400 Regions Bank employees when it hit, with 70 branches closed at one point during the height of the storm. Two months later, 25 Regions Bank branches in the New Orleans area were still closed due to severe water damage.

Since the banking industry, regulated by both federal and state governments, is required to have crisis management plans in place, Regions Bank has had a plan for years. That plan has been put into action several times in the past 2 years due to hurricanes.

### How It Works

When the hurricane warnings start, staffing is immediately increased in the bank's HR Solutions Center, a centralized call center located in Memphis, Tennessee. The daily mission of the HR Solutions Center is to respond to the needs of Regions Bank's 26,500 employees.

As a hurricane hits, the Center's employees make telephone calls both to the bank branches and to employees at home or to their emergency telephone numbers to find out how they are being impacted by the storm. Employees also have a centralized emergency telephone number they are encouraged to call to let Regions Bank know where and how they are after a weather emergency has occurred.

When the Solutions Center staff reaches employees and managers after a storm, the contact database is continually updated so there is accurate contact information for employees who are displaced by the storm. Through its communications with employees, the bank finds out whether employees are okay, whether they need water, food, and clothing or a temporary place to stay. Trucks are then sent to dispense the items needed by staff.

## Getting Employees Back to Work

After employees and their families are accounted for and safe, Regions Bank gets employees back to work as soon as possible. In fact, after Katrina, many employees were relocated temporarily or on a permanent basis to work at other Regions' locations. Employees who were relocated to other branches were given a per diem for food, hotel space and had access to a free store in a conference room where they could get food items, clothing and other things they needed. Other employees pitched in, donating items and working in the store to distribute the items to employees who needed them

Resource: For more information on disaster preparedness, Business and Legal Reports has created a section to its website (<http://hr.blr.com/collection.cfm/collection/11>). The new section contains information on disaster plans and sample policies.

## The Avian Flu

According to the national Centers for Disease Control and Prevention (CDC), an influenza (flu) pandemic is a worldwide outbreak of flu disease that occurs when a new type of influenza virus appears that people have not been exposed to before (or have not been exposed to in a long time). The pandemic virus can cause serious illness because people do not have immunity to the new virus. Pandemics are different from seasonal outbreaks of influenza that we see every year. Seasonal influenza is caused by influenza virus types to which people have already been exposed. Its impact on society is less severe than a pandemic, and influenza vaccines (flu shots and nasal spray vaccine) are available to help prevent widespread illness from seasonal flu.

Influenza pandemics are different from many of the other major public health and healthcare threats facing our country and the world. Pandemics last much longer than most flu outbreaks and generally include "waves" of influenza activity that last 6 to 8 weeks separated by months. The number of healthcare workers and first responders able to work is reduced. Public health officials do not know how severe pandemics are until they begin.

## Leave Policies

In a pandemic, people will need to stay home to take care of themselves or their family members. In order to address this need, employers should consider offering more sick time or leave time to care for family members. Leave policies may be expanded to include special clauses for a pandemic, such as:

*"In the event of a pandemic (i.e., widespread outbreak of a communicable disease such as influenza), [Company Name] will grant additional unpaid leave to employees who are unable to work as a result of special circumstances related to the pandemic."*

Another example would be:

*"In the event of a pandemic (i.e., widespread outbreak of a communicable disease such as influenza), employees will be permitted additional paid medical leave if they are*

*infected with the disease or if they have been exposed to the disease. Additional unpaid leave will be granted to employees who are unable to work because of the pandemic, but for reasons unrelated to their own illness (e.g. to care for family members who are ill, or to care for a dependent child whose school has closed temporarily because of the pandemic)."*

## **Family Care or Childcare Issues**

Schools, and potentially public and private preschools, child care, trade schools, and colleges and universities may be closed to limit the spread of flu in the community and to help prevent children from becoming sick. School closings would likely happen very early in a pandemic and could occur on short notice. Parents of these children may have to stay home to care for their children.

Many employees will be absent to care for sick family members. Remember that an employee exposed to the virus may not show symptoms for up to 48 hours, but may still be contagious. Employees should not come to work if they have been exposed to the virus until they are sure they have not contracted the avian flu.

## **Commuting Issues**

Transportation services, such as subways, buses, and trains may be disrupted, and your employees may not be able to get to work. The ability to travel, even by car if there are fuel shortages, may be limited.

## **Allow Telecommuting when Possible**

In order to prepare for a pandemic, create a list of employees who can successfully perform their jobs, or the necessary parts of their jobs, remotely. Other employees, like machine operators and many service professionals, will need to be present at the workplace or on a worksite to perform their jobs. Know which employees fit into which category in advance.

Include a provision in your company's telecommuting policy that covers pandemics, such as:

*"In the event of a pandemic (i.e., widespread outbreak of a communicable disease), [Company Name] will make temporary telecommuting arrangements as it deems necessary under the special circumstances created by the pandemic (e.g., public transportation system shutdown prevents employees from commuting to work; employee has been exposed to disease)."*

## **Consider Equipment Necessary for Telecommuters**

Employers will need to think through connectivity issues. Take note of who will need laptops and who has a home computer that will suffice. Do your employees have high-speed Internet access in order to get VPN access to company files if needed? Do you need to install special software on their laptops or home computers? Think about these things ahead of time so that you are prepared for widescale telecommuting when the time comes. In the long run, it will keep your employees safe and keep them working at home if they refuse to come to work.

# The Avian Flu—15 Ways Employers Can Prepare Early

A bird flu pandemic raises unusual and complex concerns about how to protect employee health and your organization's economic well being. For example, has your company considered how it could fulfill customer orders if 25 percent of the workforce was out sick? Do you have educational efforts in place to boost employee hygiene? Are your leave policies generous enough to encourage workers to self-quarantine rather than come to work when they might have a serious contagious illness such as the bird flu?

## 15 Planning and Preparation Steps for a Pandemic

Just as with preparedness for possible hurricanes, earthquakes, or terrorism, there's much you can do to make sure you're not broadsided and left scrambling if the avian flu or other pandemic should occur. Here's a list of steps all businesses can take to prepare:

1. Someone within your organization should begin by identifying essential functions and individuals (including employees, suppliers, and contractors) that would be needed to maintain business operations during a pandemic.
2. Identify people who could take over these essential functions if necessary.
3. Consider alternative sources for supplies and other outside services in case your normal channels are unavailable.
4. Establish an emergency communications plan with key contacts, chain of communications, and processes for tracking and communicating employee status. Consider hotlines and dedicated websites for communicating information in a timely and efficient way to employees, customers, suppliers, and vendors, both inside and outside the workplace.
5. Gather up-to-date and reliable sources of information on the pandemic from public health and emergency management sources, and pay attention to their guidance. The Centers for Disease Control website is <http://www.cdc.gov/flu/avian/index.htm>. The federal government's avian flu site is <http://pandemicflu.gov>.
6. Plan for how to safely continue business operations or safely evacuate employees if essential services, such as power, water, and public transportation, are interrupted.
7. Forecast and allow for employee absences during a pandemic. They could need to be out because of their own illness, a family member's illness, quarantines, and school or business closures.
8. Establish policies to cover:
  - ◆ Employee compensation and sick-leave absences—nonpunitive and liberal leave is recommended to encourage workers to stay home when ill
  - ◆ When previously ill employees can return to work
  - ◆ Telecommuting and flexible work hours
  - ◆ How to respond when employees who have been exposed to the pandemic flu are suspected to be ill or become ill at work
  - ◆ Restrictions on business travel to affected geographic areas

9. Develop guidelines to help minimize the frequency of face-to-face contact among workers and between workers and customers. Consider seating in meetings, office layout, shared workstations, and hand-shaking practices.
10. Notify employees of ways to reduce the spread of germs, such as frequent hand washing and respiratory hygiene/cough etiquette.
11. Provide infection-control supplies at all worksites, including hand hygiene products, tissues, and wastebaskets.
12. Evaluate how you can assure that employees will have access to healthcare services if a pandemic occurs.
13. Supply employees with educational materials about the pandemic, including signs and symptoms of illness and how it's transmitted.
14. Have an employee assistance plan in place to address employee fears, anxieties, etc.
15. Educate employees about your pandemic preparedness plan.

## #7 Aging Workforce

According to the National Institute of Occupational Safety and Health (NIOSH), middle-aged and older workers will outnumber younger ones by 2010. By that year, the number of employees aged 59 to 64 is expected to be 21.2 million, compared with about 14 million in 2000. And the number of workers aged 65 and older should reach about 5.4 million, up more than a million from 2000 figures.

People are remaining on the job longer for a number of reasons:

They need more money to sustain them because they are living longer.

- ◆ They need work-provided benefits, especially in light of pressure on pensions and Social Security.
- ◆ They seek the stimulation and sense of productivity that come from meaningful work.
- ◆ They enjoy feeling valued for their experience and knowledge.

With the aging workforce come issues, the extent of which has not been addressed by HR at any time in the past. Those issues, including retention, succession planning, and older worker safety are discussed below.

### **Aging Workforce Retention Strategies**

To engage older workers, employers need to offer the right mix of rewards, such as healthcare benefits, innovative growth and development opportunities, competitive retirement benefits, and flexible and part-time employment opportunities.

Companies must also develop the right work environment and culture to make the workday a positive experience for a multigenerational workforce. This may include training and education regarding generational differences and communication preferences, as well as diversity and sensitivity training.

Employees who are productive, involved, and feel that they are valuable to the business structure will remain in the workplace longer. In order to increase the amount of workplace interaction among employees of different ages, consider taking some of the following action steps:

- ◆ Establish a series of mentor relationships that pair older workers with younger ones; encourage pairs to meet at least monthly for a year or more to work on career goals set by the younger workers.
- ◆ Create focus groups of mixed generations to brainstorm ideas about achieving company objectives.
- ◆ In populating ongoing project teams, strive for age diversity as well as diversity of levels, race, and gender, in addition to appropriate functional and departmental representation.
- ◆ Design benefits to include options that may be attractive to older workers. For example, offer new hires aged 45 and up with lots of work experience more than the usual 1 week of vacation. Consider 1-month paid sabbaticals for employees with more than 5 or 6 years' service.
- ◆ Make it easy for older workers to obtain either in-house or external training in new technologies or methodologies.
- ◆ Facilitate "phased retirement" for older workers who want this option. Encourage part-time work, job-sharing, consulting arrangements—anything that will allow veteran employees to cut back some while still contributing their knowledge and energy to their colleagues and their company.

**Note:** The strategies above are also critical to attracting seasoned business professionals to an organization to fill new jobs and replace employees who leave for other opportunities.

## Succession Planning

Traditionally, succession planning focused on an orderly transition at the top of the company. Companies would plan for the time when a chief executive officer, president, chief financial officer, or other key manager would retire or move on to new opportunities. The focus would be on a smooth transition to new leadership, making sure the company stayed on track during the transition.

Succession planning has taken on a whole new level of importance today as companies anticipate changes in the workforce. One of the most notable is the aging of the workforce and the significant "brain drain" many companies will experience as Baby Boomers begin to retire.

In this new environment, succession planning has a broader focus. Companies must plan not only for staffing needs at the top of the company, but must also identify and plan for future human capital needs at all levels—planning for the future growth and success of the company. If the company is not prepared and has not invested in its key employees, when the need to fill a position arises, the company will likely find itself paying top dollar to attract talent from outside the organization in a fierce competition with other public and private employers.

To be of real value, the succession plan must include input from senior management, an analysis of the company's current and future needs for talent, a plan for identifying employees who will be trained and mentored to fill key roles in the

future, and a plan for recruiting outside talent to make sure the company has the skills and experience it needs. Once this is done, the plan must be implemented, and managers and supervisors at all levels of the company must be evaluated on their work in developing employees.

### **Study the Demographics**

Early in the process, it is important to analyze the current workforce. Is brain drain going to present a significant problem for the company, and if so, when and in what areas or jobs? Knowing when and where there will be key vacancies or a need to replace accumulated skills and knowledge will help focus on future needs as well as current vacancies when new employees are recruited and hired.

### **Link Strategic Goals with Human Capital Needs**

Identify the talent, skills, and experience the company will need over the next 5 to 10 years in order to achieve goals and continue to be successful. This will include the knowledge, skills, abilities, experience, education, core competencies, and even personality traits that will be needed to fill top management positions and other positions that will be key to the company's long-term success.

### **Senior Management Must Play a Role**

As noted above, a succession plan document that sits on a shelf is not helpful. Armed with demographic information and information on the talent, skills, and experience the company will need over the next 5 to 10 years, human resources managers need to involve senior managers in the planning process so that succession planning and the development of employees are adopted as strategic goals. Senior management will be more likely to participate in the process if it is linked to the long-term strategic goals of the company.

Senior management must play a central role both in developing the plan and making sure it is properly implemented, including:

- ◆ Reviewing and adjusting the 5- to 10-year analysis of talent, skills, and experience to make sure it is aligned with the long-term goals of the company
- ◆ Identifying key positions and the skills and experience necessary to fill them
- ◆ Using data that are readily available and can be gathered at regular intervals
- ◆ Identifying high flyers already working for the company who will be targeted for mentoring and cross-training so that they can fill key positions in the future
- ◆ Providing project work to targeted employees in order to expand their knowledge and experience and prepare them for future leadership roles
- ◆ Supporting recruiting efforts aimed at hiring individuals with the skills and experience needed now and in the future
- ◆ Evaluating managers and supervisors at all levels of the company on how well they develop and mentor employees

### **Succession Planning as a Retention Strategy**

Succession planning that fosters in employees a sense that the company is committed to their development has benefits beyond simply making sure the company has the bench strength it needs to fill key positions. In a highly competitive labor market such as the one predicted over the next 10 years, a working succession

plan can have a significant impact on staff retention. Employees who feel the company is making an investment in their development and career planning are more likely to be committed to the organization long term. It is important that these key employees understand the broader process so that they do not become frustrated because it appears that there is not a traditional line for advancement for their current position.

## **Measuring Success**

One way to keep the focus on succession planning and developing employees is to track and measure the success of the plan at the department and company level. One way to do this is through the use of metrics, and another is to make sure managers are evaluated on how well they implement the plan. Suggestions include:

- ◆ Measuring the total number of open positions identified as key positions in the succession plan that were filled by high-potential employees
- ◆ Using 360-degree reviews for evaluating the mentoring process by having the mentor evaluate the employee and vice versa

## **Best Practice: Older Worker Initiative Benefits Entire MIT Workforce**

When two HR professionals at the Massachusetts Institute of Technology (MIT) compared notes in 2000 regarding the concerns and future planning inquiries brought to them by older staff, they decided to develop the MIT Elder Workforce Initiative.

Under this two-person initiative, a senior retirement counselor and a manager of career services successfully coordinated existing services, policies, and programs, as well as added new ones that benefit both older workers and the entire workforce at MIT.

## **Varying Perceptions**

First, the program managers talked with MIT employees functioning in a wide range of roles to find out their perceptions of retirement. They found that there isn't one answer to what older MIT employees seek. In fact, many do not seek retirement at all; they just want more flexibility, and some want different challenges and opportunities in their work and in their personal lives.

Working closely with the Work, Family and Personal Life office within HR, which handles child care, elder care, and other needs of employees in their lives outside of MIT, the program managers focused on work flexibility, including programs such as graduated or partial retirement, revamped flex scheduling, and the development of temporary and project-oriented work programs.

## **Flexible Schedules, Tasks**

A task force on workplace flexibility created by the duo developed guidelines that have helped MIT foster a more flexible work environment in which some people can telecommute and others can use flexible scheduling, depending on the needs of their department. In a one-session course, employees learn the best way to present their work scheduling needs and job goals to their immediate supervisors in a

manner that helps them achieve consensus and meets both the employee's needs and the department's work requirements.

Also, two additional work choices were developed to meet MIT's needs and older workers' desires. "MITemps" are former, full-time MIT staffers working approximately 20 hours or more a week on special projects and work tasks. In addition, MIT partnered with a temporary agency, Veritudes, to provide MIT work opportunities to retirees on an informal, temporary basis.

### **Transition Courses, Manual**

The program managers also developed a comprehensive course for older workers titled, "Shifting Gears: Transitions for Mid-Life and Beyond." The course, with a 70-page manual, covers everything from participants using questions and exercises to discover what they want to do in life and in their careers to imagining their futures 10 years from now. Participants also learn about budgeting and financial planning based on their own style and circumstances.

Some employees use the course to learn about retirement and graduated retirement, and some use it to shift gears by introducing new goals and challenges in their work and personal lives.

Another course developed by the program managers, "Working Through the Generations," creates understanding and communication among the four generations that work at MIT—Generations Y and X, Baby Boomers, and the Silent Generation. Facilitated discussion helps employees learn about the environments in which each generation grew up and assists them in better understanding the way the other generations view the world and workplace.

For example, Baby Boomers tend to seek consensus from all attendees at meetings, while Generations X and Y want to be told what they need to know and just get back to work, notes Cushman. Once staff develops a better understanding of each generation, employees work and communicate more productively.

### **What You Can Do**

The program managers at MIT asked their employees what they want and need and marshaled existing programs and staff to put together much of the initiative. Even the cost associated with developing the courses (staff time on the part of the program managers and creating the manuals in-house) was minimal. Creativity, time, and energy are what you need to develop a similar initiative that benefits all your employees and retains prospective retirees for a longer period.

## **Addressing Safety Concerns in The Older Workforce**

The National Institute of Occupational Safety and Health (NIOSH) says that "older workers are known to experience high rates of traumatic fatalities and are also more susceptible to chronic disease and related conditions." Although they experience fewer accidents in many work settings, it may take them longer to return to the job.

In order to avoid injury and boost safety, consider the following steps:

- ◆ Encourage employees with arthritis to improve nutrition, increase exercise, and take other self-help steps. Make sure the tools they use are padded and do not press on sore joints, and design tasks that minimize pinching or grasping. Changing the size of equipment and tools gives users a better grip and requires less force.
- ◆ If employees have adjustable chairs, tables, etc., make sure they know how to make the adjustments.
- ◆ Train employees to know the risk factors of their jobs and how those affect their health status.
- ◆ Make sure employees take their scheduled breaks. Consider job rotation so that no single muscle group is over-used.
- ◆ For those who work on computers, consider supplying a track ball, which is used with an open hand instead of a conventional mouse, which encourages pinching. If workers have pain or difficulty with one hand, train them to use the mouse or track ball with the other hand.
- ◆ Provide and recommend use of carts to transport equipment, material, or finished products throughout the workplace. If these are encouraged by supervisors, no one need feel embarrassed by using them.
- ◆ Consider suspending heavy tools overhead and redesigning workstations to avoid the need for excessive reaches.
- ◆ Provide handrails on stairs and be sure there is plenty of color contrast between treads and risers, as older eyes can have difficulty with light discrimination.
- ◆ If possible, figure out ways that permit workers to alternate sitting and standing on the job.

## **Best Practice: Healthcare Provider Has Healthy Employees**

Baptist Health South Florida (BHSF) has embraced its older workers with policies and programs that effectively target and reduce risks. Baptist Health is the largest private employer in South Florida, with about 11,000 on the payroll. It was recognized by AARP as one of its Best Companies for Older Workers and by the National Business Group on Health as one of the Best Employers for Healthy Lifestyles. The not-for-profit system is made up of six hospitals.

The hospital's leaders strongly believe that its success as a healthcare organization is dependent on the quality of its employees. That's why attracting and keeping the very best workers is a top priority. The company has high expectations for all its staff and, in turn, shows respect and appreciation for those it employs.

Hospitals across the country are facing the aging-worker issue, especially among nurses. At Baptist Health, the average age of nurses is in the mid-40s. The ongoing nursing shortage means these workers are aging in place. It also means employers have to work hard to keep them healthy, despite the pressing physical and emotional demands of the job. This company is clearly proud of the longevity and service of its workforce.

## Best Policies and Practices

BHSF reaches out to older workers through its menu of superior health and retirement benefits, which begin at the age of 55 with 10 years of service. For example, workers who participate in the voluntary Health Check program are given an additional \$10,000 life insurance policy for taking a health-risk assessment. And employees can get their prescriptions filled for a discounted copay of \$5 for 21 high-cost, commonly used medications.

The company not only makes contributions to employees' retirement plans, but also permits workers to draw on the pool of money before they actually retire. This benefits older personnel who may wish to reduce their hours, yet need to supplement their income with the retirement funds.

Here are some other ways in which BHSF keeps older staff members safe and shows its appreciation:

- ◆ Experienced nurses who mentor newer colleagues get a \$200 bonus for their efforts.
- ◆ Employees get full benefits if they work as few as 20 hours per week.
- ◆ Workers of all ages are encouraged to pursue additional education; generous tuition reimbursements are available.
- ◆ Managers can attend a seminar on age diversity.
- ◆ Older employees are encouraged to participate in senior health seminars offered by the hospital to members of the community.
- ◆ Nurses and other clinical staff are expected to benefit from a new minimal-lift policy intended to keep them from ergonomic injuries related to patient handling. The policy was accompanied by a \$2 million investment in lifting equipment.
- ◆ An ergonomics consultant is available to consult with any department or employee to ensure that the workplace is free of ergo-related hazards.
- ◆ A strong return-to-work program emphasizes accommodations and alternative tasks while the employee is recovering.
- ◆ A comprehensive health and wellness initiative includes on-site fitness opportunities, health screenings, and a disease-management component. This involves individual consultation with nurses to address cardiovascular disease, diabetes, asthma, low-back pain, and other conditions.
- ◆ Weight Watchers® meetings are held at work, and the company reimburses employees who reach and maintain their target weight.

## Information Sources

To learn more about employing older workers, consult the following additional resources:

- ◆ AARP: <http://www.aarp.org>
- ◆ The California Department on Aging: <http://www.aging.ca.gov>
- ◆ NIOSH: <http://www.cdc.gov/niosh>
- ◆ University of Michigan Health System: <http://www.med.umich.edu>
- ◆ U.S. Department of Health and Human Services Administration on Aging: <http://www.aoa.gov>

## #8 Immigration

In 2006, the U.S. Department of Homeland Security's (DHS's) U.S. Immigration and Customs Enforcement (ICE) reported that arrests in worksite enforcement investigations have increased significantly in the last few years. According to ICE, it arrested 716 individuals on criminal charges (both employers and employees) in worksite enforcement investigations during fiscal year 2006, up from 176 in fiscal year 2005. The agency also arrested 3,667 individuals on administrative charges last year. Total arrests made in ICE worksite enforcement cases during 2006 reached a level that was more than seven times greater than in 2002, the last full year of operations for the U.S. Immigration and Naturalization Service.

For 2007, the immigration enforcement efforts by ICE will continue to intensify, as the DHS rolls out its enforcement strategy to expand existing efforts to target employers of undocumented workers and immigration violators inside the country.

In order to be prepared for increased scrutiny by ICE, employers should be aware of several issues in employment and immigration, including:

- ◆ No Match Letters, proposed regulations
- ◆ I-9 tips for compliance
- ◆ ICE Pilot Verification Program

### No-Match Letters

From time to time, employers will receive “no match” letters from the Social Security Administration (SSA) indicating that a discrepancy exists between the wage reporting information submitted by the employer and the SSA records for a certain employee.

Sometimes the discrepancy is the result of a clerical or technological error occurring somewhere along the line and can be easily remedied. Sometimes the source of the discrepancy is more complex.

Under the Immigration Reform and Control Act of 1986 (IRCA), it is illegal to continue to employ an individual if the employer *knows* the individual is or has become an unauthorized alien. An employer can be in violation of this provision by having constructive rather than actual knowledge that an employee is unauthorized to work.

“Constructive knowledge” is knowledge that may fairly be inferred from facts and circumstances that would lead a person to know about a certain condition. For example, an employer has constructive knowledge that an employee is an unauthorized alien if the employee fails to complete or improperly completes Form I-9.

### Proposed No-Match Regulations

DHS-proposed regulations provide that an employer also has constructive knowledge if it fails to take reasonable steps after receiving information indicating that the employee may be an alien who is not employment-authorized.

The most common examples of such information are:

- ◆ Written notice from SSA that the combination of name and SSN submitted for the employee does not match SSA records; *and*
- ◆ Written notice from ICE that the immigration status document or employment authorization document presented or referenced by the employee in completing Form I-9 was assigned to another person, or that there is no agency record that the document was assigned to any person.

Both the SSA and ICE send out “mismatch” letters to employers when these situations occur.

### **Procedure for Avoiding Liability**

The proposed regulation provides a safe harbor procedure for an employer to follow to avoid constructive knowledge. The premise of the safe harbor procedure is that an employer that takes the steps that a reasonable employer would take after receiving a mismatch letter should not be charged with an I-9 violation. If an employer follows the steps set out in the safe harbor procedure after receiving a mismatch letter, it will avoid the risk that DHS will find that the employer had constructive knowledge that the employee was not authorized to work in the United States. To qualify for the safe harbor procedure, an employer should do the following when it receives a mismatch letter:

- ◆ Check its records promptly after receiving the letter to determine whether the discrepancy results from a typographical, transcription, or similar clerical error in the employer’s records or in its communication to SSA or ICE.
- ◆ If there is such an error, the employer should correct its records, inform the relevant agencies, verify with the relevant agency that the discrepancy has been resolved, and make a record of the manner, date, and time of the verification. ICE would consider a reasonable employer to have acted promptly if the employer took such steps within 14 days of receipt of the no-match letter.
- ◆ If these actions do not resolve the discrepancy, an employer should promptly request the employee to confirm that the employer’s records are correct. If they are not correct, the employer should take the actions needed to correct them, inform the relevant agencies, verify with the relevant agency that the discrepancy has been resolved, and make a record of the manner, date, and time of the verification.
- ◆ If the records are correct according to the employee, the employer should ask the employee to pursue the matter personally with the relevant agency, such as by visiting a local SSA office and bringing or mailing the original documents or certified copies required by SSA to the SSA office. ICE would consider a reasonable employer to have acted promptly if the employer took these steps within 14 days of receipt of the no-match letter. This kind of discrepancy will be considered resolved only if the employer verifies with the relevant agency that the employee’s name matches a Social Security number (SSN) in SSA’s records assigned to that name, and the number is valid for work or is valid for work with DHS authorization. If work authorization from DHS is required, the employer should verify that DHS records indicate that the immigration status document or employment authorization document was assigned to the employee.
- ◆ If the discrepancy is not resolved within 60 days of receipt of the no-match letter, the employer should complete a new Form I-9 for the employee as if the employee were newly hired except that the new Form I-9 should be completed

within 63 days of receiving the mismatch letter; no document containing the SSN or alien number that is the subject of the mismatch letter may be used, and no receipt for an application for a replacement of these numbers may be used to establish employment authorization or identity, or both; and no document without a photograph may be used to establish identity or both identity and employment authorization. If a new I-9 is not completed in time, the employee should be terminated.

Employers may verify an SSN with SSA by telephoning 800-772-6270 (toll-free) weekdays from 7 a.m. to 7 p.m. EST, or go to <http://www.ssa.gov/employer/ssnvadditional.htm>. For info on SSA's online verification procedure, go to <http://www.ssa.gov/employer/ssnv.htm>. Employers should make a record of the manner, date, and time of any such verification, as SSA may not provide any documentation.

**Note:** Employers may come upon information that an SSN might be invalid in another way—for instance, if two or more newly hired employees have the same or consecutive numbers. In such situations, employers should also follow the safe harbor procedure. However, the proposed regulation specifically provides that knowledge that an employee is unauthorized may not be inferred from an employee's foreign appearance or accent.

## **How and Why a Number Might Change**

When an individual is lawfully admitted into this country with USCIS's permission to work here, the person is eligible for an SSN. SSNs may be issued to individuals without a work permit if they can prove it is required to comply with a federal, state, or local law such as getting a driver's license or motor vehicle registration or to comply with our various tax laws. If the individual's work or residence status changes, a new SSN might be issued. The rules are complex and must be reviewed on a case-by-case basis.

## **I-9 Form: Tips and Tactics**

The Immigration and Naturalization Act, as amended by IRCA and all subsequent amendments, prohibits employers from hiring illegal aliens. IRCA applies to all employers, including those that hire domestic help or farm laborers. Employers are required to verify that all employees hired after November 6, 1986, are legally entitled to work in the United States. The law also makes it illegal to discriminate in hiring and firing on the basis of citizenship status or national origin.

Employees must provide employers with documents that show (1) identity, and (2) employment eligibility. Employees must also complete an Employment Eligibility Verification Form, known as Form I-9, attesting under penalty of perjury that they are either U.S. nationals or aliens authorized to work in the United States.

### **I-9 Revision?**

Amendments to IRCA adopted in 1996 reduced the number of acceptable documents on List A of the I-9 form. However, according to *USCIS interim rule 62 FR 51001 (9/30/97)*, employers can continue to use the existing Form I-9 (11/21/91 version). USCIS has been developing a final rule and a new form for several years, but has yet to issue a new I-9 Form.

## Electronic Storage of I-9s

I-9 forms are not filed with the U.S. government. The requirement is for employers to maintain I-9 records in its own files for 3 years after the date of hire or 1 year after the date the employee's employment is terminated, whichever is later. This means that Form I-9 needs to be retained for all current employees, as well as terminated employees whose records remain within the retention period. Form I-9 records may be stored at the worksite to which they relate or at a company headquarters (or other) location, but the storage choice must make it possible for the documents to be transmitted to the worksite within 3 days of an official request for production of the documents for inspection.

Since April 28, 2005, employers have been allowed to retain copies of the completed Form I-9 in electronic format, in addition to the paper, microfilm, or microfiche. The signatures on Form I-9 may be made electronically. Employers may opt to complete Form I-9 on paper but store the form electronically or may choose to both complete and retain Form I-9 wholly electronically.

While there is no single governmentwide electronic signature or recordkeeping standard, ICE has stated that the Internal Revenue Service (IRS) electronic standards (*IRS Revenue Procedure 97-22*) may serve as a helpful reference for employers until DHS issues regulations to govern the storage of Form I-9s.

## Making the Case for Electronic Storage

Before April 28, 2005, only three types of I-9 record storage were permitted: paper, microfilm, or microfiche. Even after that date, however, employers were not required to convert to electronic copies—conversion was, and is, entirely voluntary. Employees who are in the United States on temporary work visas, and some others, require HR to periodically reverify their eligibility to work in the United States.

Clearly, centralized electronic storage of records will make that task of updating I-9 information much easier: Employers can build a follow-up function into the database and fill in Section 3 of the I-9 Form with the updated info easily. Furthermore, maintaining the security of the documents, especially to guard confidential data, is easier with electronic records, which can be password-protected.

**Note:** U.S. immigration law does not prescribe or proscribe storage of a private employer's I-9 records in employee personnel files. As a practical matter, however, particularly if a large number of employees is involved, it may be difficult to extract records from individual personnel files in time to meet a 3-day deadline for production of I-9 records for official inspection. As a result, it is recommended that employers store I-9 Forms separately from individual personnel files.

## ICE Verification Program

DHS has launched an initiative to help employers ensure that they are hiring and employing a workforce that is authorized to work in the United States.

Called the ICE Mutual Agreement Between Government and Employers (IMAGE), the program is designed to build cooperative relationships between government and businesses to strengthen hiring practices and reduce the employment of illegal aliens. The initiative also seeks to accomplish greater industry compliance and

corporate due diligence through enhanced federal training and education of employers .

Under the program, ICE will partner with companies that will serve as charter members of IMAGE and liaisons to the larger business community.

As part of this program, businesses must also adhere to a series of best practices, including the use of the Basic Pilot Employment Verification Program, administered by the U.S. Citizenship and Immigration Services (USCIS). To date, more than 10,000 employers are using the Basic Pilot Employment Verification to check the work authorization of their newly hired employees.

ICE will provide training and education to IMAGE partners on proper hiring procedures, fraudulent document detection, and antidiscrimination laws. ICE will also share data with employers on the latest illegal schemes used to circumvent legal hiring processes. Furthermore, ICE will review the hiring and employment practices of IMAGE partners.

Those companies that comply with the terms of IMAGE will become “IMAGE certified,” a distinction that ICE says could become an industry standard.

In order to participate in the program, companies must first agree to a Form I-9 audit by ICE. They must also use the Basic Pilot Employment Verification program when hiring employees. In order to become IMAGE-certified, partners must also adhere to a series of best practices. These include the creation of internal training programs for completing employment verification forms and detecting fraudulent documents. IMAGE partners must also arrange for audits by neutral parties and establish protocols for responding to no-match letters from the Social Security Administration. ICE is also asking employers to establish a tip line for employees to report violations and mechanisms for companies to self-report violations to ICE. A full list of best practices can be found at [www.ice.gov](http://www.ice.gov) .

## #9 Managing a Diverse Workforce

According to 50-year projections from the 2000 U.S. Census, the number of Latinos and Asian Americans in the United States will nearly triple, while the white non-Latino population will increase a mere 7 percent. In the year 2000, white non-Latinos accounted for 69 percent of the U.S. population that year, while Latinos (who can be of any race) made up 13 percent, African Americans, 13 percent, and Asian Americans, 4 percent.

In order to respond to the changing demographics in the United States and the changing workforce, American employers must begin now to address attitudes, policies and compliance efforts.

### **The New EEO-1 Report**

As discussed in #2 Compliance Issues, above, the EEO-1 Report was substantially changed by the EEOC in 2006, including changes to the race and ethnic reporting

categories, as well as the job categories on the form. See the preceding section on “Compliance Issues” for more information.

**Selective resurveying.** According to EEOC, employers may choose to resurvey only employees who were identified as “Asian/Native Hawaiian or Other Pacific Islander” on the old EEO-1, but doing so is risky. To selectively resurvey may, says the EEOC, create a perception among employees that management is singling out one racial group. It also may create the perception that management is being unfair to other employees who want to self-identify with the new category for “Two or More Races” but would not have the opportunity to do so at that time. If an employer does not resurvey for the 2007 EEO-1 Report, EEOC suggests that employers should count employees previously counted as “Asian/Native Hawaiian or Other Pacific Islander” as “Asian” for the 2007 EEO-1 Report.

**Multiracial employees.** If an employee identifies himself or herself as belonging to several specific races (even though the employer asked only if the employee considers himself or herself to be “Two or More Races”), the employer should count the employee in the “Two or More Races” category. However, EEOC states that the employer should preserve the detailed race information because it is an employment record (see EEOC’s *Q&As on Revised Ethnic and Race Categories*, citing 29 CFR Sec. 1602.14).

Employers may ask employees to specify particular races rather than to check “Two or More Races,” but they are not required to do so. Again, if employees supply detailed race data, employers must preserve it as an employment record under 29 CFR Sec. 1602.14.

**Hawaiian employers.** Under the old rules governing the EEO-1 Report, covered employers in Hawaii were required to report only on gender and not required to report the race and ethnicity of their employees. The new EEO-1 rule requires that employers in Hawaii report on gender, race, and ethnicity for their employees in each of the new job categories listed on the new EEO-1 Report.

**Self-identification: rules and limits.** According to EEOC, the basic principles for ethnic and racial self-identification for purposes of the EEO-1 Report are first to offer employees the opportunity to self-identify and, second, to provide a statement about the voluntary nature of this inquiry for employees. In order to make this system of self-identification work, employers should consider the following information.

For those employees who decline to or do not self-identify, employers should establish and consistently use a visual identification procedure. If possible, employers should record the method of identification utilized (either visual or self-identification).

In order to help employers comply with the rules regarding self-identification, EEOC suggests that the following (or similar) language be included on any questionnaire form used to gather racial/ethnicity data from job applicants or employees:

*The employer is subject to certain governmental record-keeping and reporting requirements for the administration of civil rights laws and regulations. In order to comply with these laws, the employer invites employees to voluntarily self-identify their race or ethnicity. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information obtained*

*will be kept confidential and may be used only in accordance with the provisions of applicable laws, executive orders, and regulations, including those that require the information to be summarized and reported to the federal government for civil rights enforcement. When reported, data will not identify any specific individual.*

## **Refusal to Identify or Reason to Doubt Identification**

If an employee refuses to self-identify using the new race and ethnicity categories, EEOC directs employers to obtain the necessary information from existing employment records or visual observation. As previously discussed, employment records and visual identification may be used only if an employee refuses to self-identify.

According to guidance provided by EEOC, if an employer believes that an employee is of a different race or ethnicity than the employee claims to be, the employer must accept the employee's self-identification by race and by ethnicity. Since self-identification is a basic principle underlying the changes to the EEO-1 Report, EEOC encourages deference to the employee's self-identification.

## **Diversity Programs**

Employers that embrace diversity are likely to build morale, retain employees, and increase productivity. Through training, employers can encourage workers to appreciate the differences between themselves and their co-workers and create a work environment that not only recognizes those differences, but leverages them as well.

Before launching any diversity initiative, it's important to define diversity. First, make it clear that diversity is not about affirmative action. Rather, it integrates awareness of, and respect for, differences in the way people communicate and interact. It also makes the organization more responsive to the continually changing demands of the marketplace by drawing on the cultures, talents, and ideas of a broader group of people.

A successful diversity training program encourages participants to:

**Manage their minds.** Employers and employees need to look at the bigger picture and embrace differences in the workforce. They should adopt a broad definition of diversity to include not only race and culture, but also gender, religion, age, nationality, and lifestyle, for example.

**Manage their words.** Employees should be taught to be respectful of their co-workers' beliefs and practices during conversation and when telling jokes.

**Manage the unspoken.** Employees need to remember that gestures or nonverbal cues that are acceptable in one culture might be offensive in another. In general, diversity training should be conducted for all employees at least once per year, but training for most employees doesn't necessarily have to be intensive. Diversity training can be a small, 5-minute update in a staff meeting.

## **In-depth Training for Managers**

Managers, however, need more in-depth training so that they can foster team-building and encourage all workers to recognize the value of diversity. In addition, training can address any misconceptions that managers might have about diversity and

the company's legal obligations to comply with federal Equal Employment Opportunity requirements.

### **Training Tips**

Consider the following tips to help make diversity training for managers successful:

- ◆ Stay up to date on current events related to diversity and regularly update managers on what you find.
- ◆ Study diversity initiatives implemented in other companies and explore which techniques would be most effective in your workplace.
- ◆ Provide managers with tips for promoting diversity. For example, when creating teams to work on particular projects, managers should group employees across cultural, racial, and gender lines, giving them a reason to interact.
- ◆ Encourage managers to model the behavior they want employees to exhibit, challenge stereotypical assumptions, and increase understanding about cultural differences.

### **Measuring Success**

There are several ways to measure the success of a diversity training program. Those ways include tracking the number of complaints received and how issues are resolved, conducting surveys, and measuring managers' understanding of diversity issues in pretraining and post-training quizzes.

## **Best Practice: Making the Grade With Diversity Initiative**

Diversity isn't just a written policy statement at Educational Testing Service (ETS); it's a philosophy embedded into everything the company does. Not only is it important from an HR perspective for the company to create an environment in which every individual is respected and valued, it's critical from a business perspective as well.

That's because ETS, a nonprofit organization that develops and administers achievement and admissions tests in the United States and 180 other countries, serves customers from diverse populations. In early 2002 the company launched its Strategic Diversity Initiative to promote diversity among its 2,400 employees. Currently, more than one-third of hires are from underrepresented groups. This figure has increased each year since the initiative began.

The initiative has four elements:

- 1. Strategic staffing.** When recruiting candidates for job openings, ETS looks for sources most likely to draw in a diverse population, such as "historically black colleges." But the company doesn't just show up on campuses to recruit minorities; it acts as a resource. For example, it will offer a workshop on fairness at a conference sponsored by the Hispanic Association of Colleges and Universities.
- 2. Professional and career development.** Each employee has a personal development plan that helps identify opportunities for education and advancement. Through internal courses and a tuition assistance refund program for

external courses, the company helps employees expand their knowledge and develop broader points of view.

3. **Work environment.** ETS strives to create an environment in which each individual's uniqueness is valued and each person is respected. Employee opinion surveys confirm that the company has created a welcoming environment. Creating a place where people feel accepted and proud to work has helped ETS attract and retain a diverse workforce and maintain a relatively low turnover rate.
4. **Leadership accountability.** Although diversity is every employee's duty at ETS, managers have the additional responsibility of making sure that each individual is held accountable, and all employees are treated with dignity.

In order to be accountable to, managers are expected to demonstrate three core competencies:

1. **Ability to manage diversity.** Managers are responsible for treating all employees equitably and fairly whether they hold a high school degree or a Ph.D. and regardless of their race, age, and experiences, and for making sure others do the same.
2. **Ethics and values.** Managers must ensure that employees adhere to ETS's core values and beliefs. They are expected to reward the right values and address any problems.
3. **Integrity and trust.** ETS wants managers to be truthful individuals who can be trusted. Managers are expected to provide support to employees who need it and to admit their own mistakes, when necessary.

## What to Do

Consider the following tips to strengthen diversity in the workforce:

- ◆ Position diversity as a core business value. Look at diversity as an asset to your business.
- ◆ Hold individuals accountable. At a minimum, managers and other employees should be held accountable for their actions during their annual performance reviews. But management shouldn't wait until an employee's annual review to correct inappropriate behavior. For example, if an employee tells ethnic jokes, his or her manager should promptly explain why such behavior is unacceptable.
- ◆ Understand that you can't change everyone. If an employee refuses to change his or her discriminatory behavior, consider whether that person should continue working in your organization.
- ◆ View diversity as an ongoing process. Companies should continually look for ways to improve their diversity programs.

## English-Only Rules

Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination based on national origin as well as race, color, religion, and sex. A rule requiring employees to speak only English at all times on the job may violate Title VII, unless an employer shows it is necessary for conducting business.

If an employer believes the English-only rule is critical for business purposes, employees have to be told when they must speak English and the consequences for violating the rule. Any negative employment decision based on breaking the English-only rule will be considered evidence of discrimination if the employer did not tell employees of the rule.

## **Accent**

An employer must show a legitimate nondiscriminatory reason for the denial of employment opportunity because of an individual's accent or manner of speaking. Investigations will focus on the qualifications of the person and whether his or her accent or manner of speaking had a detrimental effect on job performance. Requiring employees or applicants to be fluent in English may violate Title VII if the rule is adopted to exclude individuals of a particular national origin and is not related to job performance.

## **Establishing Language Requirements**

As mentioned above, an employer may require that an employee be able to speak and understand English if the requirement is based on a business necessity. For example, a retail establishment that sells its products to English-speaking customers may require that its salespeople are able to speak and understand English while on the retail floor. However, a policy requiring that only English be spoken at lunch, on breaks, or outside the workplace will be considered unlawful.

The following issues should be addressed in cases in which the employer seeks to establish an English-only policy:

- ◆ **Business necessity.** Is there a sound business reason for establishing the policy? For example, is communication hampered between the customer and the employee?
- ◆ **Supervisory concerns.** Are there complaints that employees are not understanding instructions or communicating about their productivity?
- ◆ **Workplace safety.** Are there concerns that safety problems will develop if communication is hampered?
- ◆ **Productivity.** Are there concerns that productivity is hampered by ineffective communication?

## **Tips when Establishing an English-Only Policy**

When establishing an English-only policy, an employer should be sure the policy is justified by business necessity. Guidelines issued by EEOC provide examples of a business necessity that would justify an English-only policy:

- ◆ For communications with customers, co-workers, or supervisors who speak only English
- ◆ In emergencies or other situations in which workers must speak a common language to promote safety
- ◆ For cooperative work assignments in which the English-only rule is needed to promote efficiency
- ◆ To enable a supervisor who speaks only English to monitor the performance of an employee whose job duties require communication with co-workers or customers

In addition, employers should:

- ◆ Meet with employees to explain the policy requirements and the consequences of violating the policy.
- ◆ Limit the English-only policy to times when it is justified by a business necessity—i.e., native language communications should not be prohibited during breaks or meal periods.
- ◆ Enforce the rule consistently and fairly; e.g., don't allow some employees to speak in their native language and not others.

As a practical matter, an employer should give its employees reasonable advance notice—in English and in their native language—before enforcing a newly established English-only rule. Many employers also allow a grace period before disciplining employees under a new policy. It is often very difficult to change language habits, and therefore, employees may inadvertently violate the rule when it is first enacted.

## #10 HR for the Future

According to recent government statistics, human resources, training, and labor relations managers and specialists hold about 820,000 jobs in the United States. Government projections show that overall employment of human resources, training, and labor relations managers and specialists is expected to grow faster than the average for all occupations through the year 2014.

This is good news for HR professionals. However, HR professionals will continue to be challenged by the driving need to develop professionally, to stay up to date with legal and other HR-related information, and to continue to increase their credibility in the workforce.

### Education and the Human Resources Profession

Unlike many professions, there are no specific academic requirements for the human resources manager. However, most employers prefer that candidates have at least a bachelor's degree. Once an HR professional begins his or her career, continuing professional education is critical, particularly because standards for employment are in a constant state of change.

There are a multitude of degrees and courses that could be taken to prepare for and enrich a profession in human resources. Consider the following suggestions for courses of study in HR:

1. **Core programs.** Many colleges and universities have programs leading to a degree in personnel, human resources, or labor relations. Some offer degree programs in human resources administration or human resources management, training and development, or compensation and benefits. Depending on the school, courses leading to a career in human resources management may be found in departments of business administration, education, instructional technology, organizational development, human services, communication, or

public administration, or within a separate human resources institution or department.

- 2. Additional courses.** Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business, and behavioral sciences is useful. Some jobs may require a more technical or specialized background in engineering, science, finance, or law, for example. Most prospective human resources specialists should take courses in compensation, recruitment, training and development, and performance appraisal, as well as courses in principles of management, organizational structure, and industrial psychology. Other relevant courses include business administration, public administration, psychology, sociology, political science, economics, and statistics.
- 3. Specialists.** Courses in labor law, collective bargaining, labor economics, labor history, and industrial psychology provide a valuable background for the prospective labor relations specialist. A background in law is also desirable for employee benefits managers and others who must interpret the growing number of laws and regulations. As in many other fields, knowledge of computers and information systems is also useful. An advanced degree is increasingly important for some jobs.
- 4. Labor relations.** Many labor relations jobs require graduate study in industrial or labor relations. A strong background in industrial relations and law is highly desirable for contract negotiators, mediators, and arbitrators; in fact, many people in these specialties are lawyers.
- 5. Management positions.** A master's degree in human resources, labor relations, or in business administration with a concentration in human resources management is highly recommended for those seeking general and top management positions. For many specialized jobs in the human resources field, previous experience is an asset; for more advanced positions, including as managers as well as arbitrators and mediators, it is essential.

## Professional Certificate Programs

Many colleges and universities offer continuing education programs leading to a certificate instead of a degree. A certificate of competency might make good sense for an HR professional who is already holding a master's degree but who wants to learn more or increase his or her level of expertise in a specific area of study.

Most organizations specializing in human resources offer classes intended to enhance the marketable skills of their members. Some organizations offer certification programs, which are signs of competence and can enhance one's advancement opportunities. For example, the following certifications are offered:

- ◆ Human Resources Certification Institute Professional in Human Resources (PHR)
- ◆ Human Resources Certification Institute Senior Professional in Human Resources (SPHR)
- ◆ Human Resources Certification Institute Certified Compensation Professional (CCP)
- ◆ WorldatWork Certified Benefits Professional (CBP)
- ◆ WorldatWork Certified Employee Benefits Specialist (CEBS)

- ◆ International Foundation of Employment Benefits Plans International Personnel Management Association—Certified Professional (IPMA-CP)
- ◆ Internal Personnel Management Association International Personnel Management—Certified Specialist (IPMA-CS)
- ◆ Internal Personnel Management Association Human Performance Improvement Certificate (HPI)
- ◆ American Society of Training and Development Certified Training Professional (CTP)

### **Professional HR Associations**

As with most professions, networking is a primary means of HR professional development. Attending organized events held by professional associations should play a role in business networking and professional development. Regular attendance at the same professional association's meetings and other activities will create a stronger networking bond. If not currently networking in associations or other groups within their industry, HR professionals should consider becoming active in an industry group, joining the Chamber of Commerce or a civic group, attending a regional or national HR conference or trade show, and interacting with their professional peers.

The following are just a few of the premier associations for HR professionals:

- ◆ Society for Human Resource Management (SHRM); <http://www.shrm.org>
- ◆ American Society of Training and Development (ASTD); <http://www.astd.org>
- ◆ International Foundation of Employee Benefit Plans (IFEBP);
- ◆ WorkatWork; <http://www.worldatwork.org>.

### **Professional Development: The Future of HR**

According to job growth projections made by the U.S. Department of Labor, legislation and court rulings setting standards in various areas—occupational safety and health, equal employment opportunity, wages, health care, pensions, and family leave, among others—will increase demand for human resources, training, and labor relations experts.

Rising healthcare costs should continue to spur demand for specialists to develop creative compensation and benefits packages that firms can offer prospective employees. Employment of labor relations staff, including arbitrators and mediators, should grow as firms become more involved in labor relations and attempt to resolve potentially costly labor-management disputes out of court.

### **Need for Specialists Will Grow**

Additional job growth may stem from increasing demand for specialists in international human resources management and human resources information systems. Demand may be particularly strong for certain specialists. For example, employers are expected to devote greater resources to job-specific training programs in response to the increasing complexity of many jobs, the aging of the workforce, and technological advances that can leave employees with obsolete skills. This should result in strong demand for training and development specialists. In addition,

increasing efforts throughout industry to recruit and retain quality employees should create many jobs for employment, recruitment, and placement specialists.

### **Look to Management, Consulting, and Employment Services**

Firms involved in management, consulting, and employment services should offer many job opportunities as businesses increasingly contract out human resources functions or hire human resources specialists on a temporary basis in order to deal with the increasing cost and complexity of training and development programs. Demand also should increase in firms that develop and administer complex employee benefits and compensation packages for other organizations.

Demand for human resources, training, and labor relations managers and specialists also are governed by the staffing needs of the firms for which they work. A rapidly expanding business is likely to hire additional human resources workers—either as permanent employees or consultants—while a business that has experienced a merger or a reduction in its workforce will require fewer human resources workers.

### **Beware of HR Tasking and Outsourcing**

As human resources management becomes increasingly important to the success of an organization, some small- and medium-sized businesses that do not have a human resources department may assign employees various human resources duties together with other unrelated responsibilities.

In any particular firm, the size and the job duties of the human resources staff are determined by the firm's organizational philosophy and goals, skills of its workforce, pace of technological change, government regulations, collective bargaining agreements, standards of professional practice, and labor market conditions. Job growth could be limited by the widespread use of computerized human resources information systems that make workers more productive. Like that of other workers, employment of human resources, training, and labor relations managers and specialists, particularly in larger firms, may be adversely affected by corporate downsizing, restructuring, and mergers.

## Conclusion

We hope that you have enjoyed this special report and that you found the information contained in this report useful. BLR strives to provide human resources professionals with practical and easy-to-use information on a wide variety of topics. If you would like to see the complete library of publications available through BLR, please visit our website at [www.blr.com](http://www.blr.com) or call our Customer Service department at 800-727-5257.

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