

**The**  
**HR Answer Book**



# **The HR Answer Book**

An Indispensable Guide for Managers and  
Human Resources Professionals

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Rebecca Mazin**

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# Foreword

Over the last fifty years we have watched the products we use every day in the home and in the office become more and more complex in the never-ending effort to make our lives more efficient. The kitchen toaster used to be a pop-up, two-slice toaster in the 1950s. Today you can make an entire meal in a toaster oven on the same kitchen counter. The single phone in the house that was familiar to many of us fifty years ago has become the cell phone with two lines that we carry everywhere, all the time. More complex products mean more complex production processes. Advances in technology in the workplace have succeeded in producing a more efficient and productive business environment, which is good news to the stockholders and stakeholders of the global economic forces of today.

Thanks to “the computer age” and its mind-boggling advancements, distance between people has, to a great extent, become irrelevant, and time between events has all but disappeared. The local market now spans the globe. The World Wide Web, coupled with a highly evolved distribution system, allows businesses to go anywhere on the planet to find customers and acquire resources. There are virtually no more “gatekeepers” for information access with almost universal Web access. These developments have had an undeniable impact on global society and its workforce.

The “company man” of the 1950s has become the “digital person” of the new millennium. Modern modes of communication and transportation have changed the nature of the family relationship. The forty-hour work-week has expanded to the 24/7 world. The predominant two-parent, one-income household has been diluted by an increase in the number of single-parent wage earners and dual-income households. More mothers are working and more fathers are sharing the parenting responsibilities than fifty years ago. Spouses commute between cities on weekends to see each

other and their families. The office has moved into the home or the car or the airport. Communications between people are less and less face-to-face and more and more computer-to-computer or phone-to-phone. The connectivity and freedom of the phone in the 1950s has become the lifeline and electronic leash of today.

Today's workers bring a lot more to their employers, but also demand more in return. One of these expectations is to be given more flexibility to be able to achieve their personal goals, whatever they may be. It could be starting or raising a family. It may be more flexibility in their medical benefit packages. It may be adjustments to the time-off practices to care for aging parents or pursue a lifelong passion. Flexibility in workplace location is more important to many workers, for convenience and for family reasons. With a phone, fax, and Internet access the workplace possibilities are limitless.

One could argue that western society is moving up Maslow's hierarchy. The security items of food and shelter are generally taken for granted. Receiving a paycheck and medical benefits are just the beginning of the employment discussion. The pivotal elements in the "offer package" of today focus on tailoring the job to the individual needs of the employees in the workforce. It is the satisfaction of these lifestyle needs that make the difference today in successful hiring and management processes. These include work hours and days, working from home, travel requirements, family-friendly programs and benefits, and tools that come with the job (cell phones, computers, PDAs). To acquire the skilled hire of the twenty-first century all of these things and more are likely to be part of the discussion. The dissatisfied employee is highly mobile and can easily search elsewhere for employment on the World Wide Web, where he may have found his last job in the first place.

With a more sophisticated and educated workforce, one might think that management of these workers should require less human resource expertise. Today's experienced CEO would say as much HR support is needed today, if not more, than was needed in the past. The HR professional of today has a far more complex role than before. The expanded geography of today requires international knowledge and skill. The litigious nature of our society means more and more time spent on legal matters. The highly regulated nature of business today means more involvement with local, state, and federal issues. To master this role and maintain an inviting, productive, and supportive climate in which to conduct business demands a highly responsive and sophisticated HR organization.

*Jay S. Walker, Chairman, Walker Digital, and founder,  
priceline.com*

*Eileen Walker, former manager U.S. compensation, IBM Corp.*

# Preface

**H**iring and retaining the best employees, developing a skilled workforce, and navigating the ever-changing terrain of employment laws can cause headaches for even the most seasoned HR professional. And if you are not a human resources professional with many years of experience spanning every HR function but are in a position where you need to make some tough HR decisions—well, it is not surprising that you may have questions. Many questions. The purpose of this book is to give you answers.

*The HR Answer Book* is designed for:

- ◆ Business owners or executives with HR questions
- ◆ Managers who are looking for guidance as HR issues arise in their day-to-day activities
- ◆ HR professionals who are relatively new to the field, or want to broaden their knowledge and keep current on the wide range of workplace employment issues, or those operating without a corporate office or senior HR manager to turn to

While the information in this book will be helpful to readers in companies of all types and sizes, we particularly aim to address the concerns of small to midsize organizations operating with small HR departments or no dedicated HR personnel—businesses that do not have dozens of specialists and consultants at their disposal. For you, this book is meant to be a one-stop desk reference, where you can quickly locate the answer to a single question or enhance your understanding of an entire subject area.

This is not a book that delves into abstract HR theories or fleeting “management trends du jour.” There are countless books that cover these

topics, and we have found that many of these fads have little relevance to real life at most small or midsize companies. Instead, we focus on concrete, practical, and action-oriented information that you can apply to real situations as they arise in your business. We answer those nagging questions that you may (mistakenly!) feel are “too stupid to ask” and offer step-by-step suggestions for dealing with common workplace scenarios, all illustrated with examples of best and worst practices from actual companies.

The book covers the range of essential HR functions, from core employment practices, such as hiring, compensation, and benefits, to the emerging “hot button” issues in HR management, such as workplace privacy, Internet, e-mail, and technology issues. We discuss the provisions of the critical employment laws, how to spot and correct potential legal problems before they become costly lawsuits, and when to seek the advice of an attorney. Because it is impossible in any book to tell you everything you need to know about this ever-evolving subject area, we have included a comprehensive reference guide with Internet and other no-cost or low-cost sources for obtaining more information on covered topics.

We had two primary reasons for writing this book. First, in our current capacity as external consultants, we recognized a need among our clients for comprehensive, accessible information on employment issues from both a management and legal perspective. On a more personal level, we realized that there were times in both our careers when we could have used a book exactly like this one. We have worked for start-up companies and developed an in-house HR function to effectively respond to tricky employment-related issues. We have managed small HR departments where one or two professionals were expected to “know everything” and “do it all.” We have sat at our desks wondering who to call or where to turn for fast, current information on a limited budget. Throughout the writing of this book, we kept returning not only to the questions that our clients have asked us, but also those that we had asked ourselves at crucial junctures in our careers.

We have learned over the years that an effective human resources practice involves not only getting reliable answers to questions, but also asking the right questions in the first place. In the chapters that follow, we’ll give you the tools you need to increase your HR savvy and make informed, legally sound decisions.

*Shawn Smith  
Rebecca Mazin*



# Employee Selection

## How Do I Find, Attract, and Select the Best?

**H**iring is a basic need for any employer that has at least one employee who is not a partner or family member. This is where the employment relationship begins. Policies and procedures for employee selection will set the tone for the interactions that follow throughout an individual's time with the organization.

Hiring someone is easy. Hiring the best candidate isn't always as simple, and will require planning and a logical process. Whether you have one job opening or one hundred, the process and procedures that you use for employee selection will be directly reflected in the results that you achieve.

### FINDING YOUR CANDIDATES

Whether you are looking to hire in a strong economic environment where there is low unemployment, or during a weaker period where unemployment is high, there are many sources for candidates. The candidates you are looking for may or may not be employed elsewhere.

### Some Preliminary Steps

Before identifying the best recruiting sources, you must clearly identify the parameters of the job. While a complete job description is helpful (see

Chapter 6, on compensation), it may not be available and does not always include all of the information that you need. Answering the following questions will help you to define the job parameters. If you are the hiring manager, you will probably have the answers to these questions already, or you know where to get them. If you are not the hiring manager, then the hiring manager is a good starting point.

◆ *What is the job title and who does the job report to?* In your company, a particular job title or level may have certain benefits or perks attached to it. Does your company allow flexibility or creativity with job titles? A candidate may only accept a job with a “director” title, or may be satisfied with a lesser title if you add the word “senior.” Employers often add words like *senior* or *junior* with the intention of upgrading an individual or adding an entry-level spot in a department. Use care in creating these new titles. While the title of “senior sales associate” will add status, a title such as “junior sales associate” can be a detriment. Think of the customers or other employees who will interact with this person. Does dealing with a “junior” inspire confidence?

Speak to the person to whom the job reports to determine this individual’s needs and expectations. In a larger department, the position may report to a level below the hiring manager. In this situation, you should speak with both persons.

◆ *When does the position have to be filled, and how much does it pay?* A manager may demand a quick hire. Before you rush to offer the job to the first available candidate, remember that the cost of hiring the wrong person is potentially higher than leaving the position vacant. The wrong person can make costly mistakes or cause dissatisfaction and turnover among other employees. Set realistic hiring timelines that also take into account the availability of necessary resources such as space, equipment, training, and supervision.

If you are filling an existing position, find out what the pay range has been in the past. If it is a new position, ensure that the pay rate is appropriate (see Chapter 6 on compensation). If your company has paid sign-on bonuses, relocation expenses, or any other incentives or special benefits in the past, determine if they are available for this position and, if so, how much money is available.

◆ *Who needs to meet or interview this person, and who will make the job offer?* Identify everyone who needs to be part of the hiring decision and determine their general availability to conduct interviews. Also, think about people who will be helpful in attracting candidates. These people may in-

clude employees from a promising candidate's hometown or alma mater, as well as those with exceptional personalities who might be effective salespeople for the organization.

It is often helpful to obtain many different perspectives on an applicant, from both prospective superiors and peers. Consider having an employee who's at the same job level as the open position either conduct an interview, give a tour of the facility, or take a coffee break with candidates. Not only is employee involvement in the selection process good for morale, it will provide valuable feedback—and a peer can help to “sell” the company.

The job offer should be made by the person with the authority to make decisions and respond to demands. This can be the hiring manager, a senior manager or executive, a member of the HR staff, or a search firm, if one is used.

### WORTH REPEATING: TOUR GUIDE OBTAINS REFERENCES

For a mid-management position in a service industry, a strong performer met the candidate as part of a tour. The manager identified all they had in common, including people they both knew and had worked for. These names became the first references to be called.

◆ *What are the skills/education needed for this position? What is the work experience required for this position?* Create a list of the core skills, education, and experience needed to get the job done. You can add additional skills and experience that would be helpful and designate these elements as optional for successful performance of the job.

◆ *Was someone promoted or fired? Where did the last person come from?* If the vacancy was created by a promotion, gather information about the position from the person who last held the job. Check with the hiring manager to ensure that the job content is not changing. If the vacancy was created because someone was fired, find out if the termination was due to poor job performance or a lack of specific knowledge or skills.

If the last person in the job had been hired within the past year, check for a file of resumes of other candidates who applied for the position. Find out whether the person came from a search firm, recruitment advertising, networking, or other source, then make it a priority to return to this source if it had previously generated strong candidates.

## Employment Advertising

### *Should I run an ad in the newspaper?*

When faced with the task of filling a job opening, often an employer's instinctive response is to put an ad in the newspaper. This may seem like a logical step—you have a job opening; the newspaper has help wanted ads. In many situations, however, classified newspaper ads are your least productive source of qualified job candidates.

If you are seeking a candidate in a highly competitive field where the number of job openings is far greater than the number of people in the workforce with the necessary skills, then many employers with similar needs will probably be running ads as well. The people who are successfully employed in a high-demand field are usually not reading the help wanted ads. In these circumstances, your ad is likely to generate either very few responses, or responses from individuals who lack the necessary qualifications.

If the job opening is for a position with few requirements, or in a field that is overpopulated, you are likely to receive a very large response. A flood of resumes does not ensure the highest-quality candidates, and the larger the response, the more work you will need to do. If you feel it is important to generate a large candidate pool, make certain that you are able to handle the applicants properly. A large candidate pool is useless if you cannot screen and respond to the resumes.

### *How do I write an ad?*

If you decide to run an advertisement, follow these guidelines:

- ✓ Write a creative ad that reflects not only the position but also the culture of your company. Employment advertising can be expensive, so avoid repetition and use abbreviations.
- ✓ Place the ad in the appropriate category and on the best day for the particular publication. Research these factors by checking the actual newspapers. You can save money by combining more than one position in the same ad if the positions belong together. Don't run an ad for a chief financial officer and a mailroom clerk in the same box. Even a great ad can be ignored in the wrong location.
- ✓ Do not automatically repeat an ad week to week. It is unlikely that you will receive a significantly different response. If you place frequent ads, review them for similarities. For example, if you are searching for



two administrative assistants, there is no reason to run two separate ads on the same day or in consecutive weeks for positions in different departments. Before placing an ad, look at recent ads from your company that sought similar skills and review the responses that you received.

- ✓ Provide methods for response that are appropriate to the specific job. Don't require a resume from a storeroom clerk, and have a mechanism for receiving resumes electronically for technology-related positions. If you have a fax number for responses, keep the fax machine on and filled with paper, and make sure it's in a location where responses can be received in confidence.
- ✓ Consider using an advertising agency that specializes in recruitment advertising. These firms earn their fees from the newspapers. They can assist you with placements and effective wording of an advertisement, and they may have the advantage of later deadlines.
- ✓ Search for alternative publications, such as college, trade, or industry journals or community newspapers. You can find many of these at your local library or by searching the Internet.

### **BETTER FORGOTTEN: GREAT AD, WRONG NUMBER**

A start-up in a major city placed an ad in the Sunday edition of the newspaper. The ad included a phone number to call to set up an interview. The phone number was incorrect and rang all weekend at an entirely different company two blocks away! Double-check any information going into an employment ad.

## **Other Referral Sources**

*How can my business contacts help me to find qualified candidates?*

Networking is possibly the single most effective way to generate candidates. Begin your networking with the hiring manager. The hiring manager may have resumes from a previous search or know the names of people in similar positions at other companies. Contact these potential candidates to ask if they are interested in the opening or if they know of anyone else who might be interested.

Ask all managers for referrals. Besides referring specific individuals, managers can help identify other companies employing individuals in similar positions that would be good sources of candidates. Compile a list of all likely sources and call them. Ask those you speak to if they know of anyone who might be interested in the open position. Other networking sources include industry or trade associations and business organizations such as chambers of commerce. Newspapers and industry magazines often highlight people and awards programs, which will generate additional names.

Networking can be as simple as calling a counterpart at another company. Other organizations may not have the same need, but they will have resumes or know of potential candidates elsewhere. Former employees are also an outstanding source of referrals for the same reasons. Many companies have established informal or formal alumni programs as an effective form of networking for candidates. You can begin these programs with simple lists and phone calls, invitations to new product launches and tours, mailings of employee news updates and job openings, and invitations to alumni events.

Not only is networking a cost-effective way to identify candidates, but because it is a direct method you will also save time.

### ***How can I develop an effective employee referral program?***

An employee referral program is another form of networking under which a company rewards current employees for identifying new employees. You do not have to offer a huge—or even monetary—reward in order to attract interest. Rewards as small as \$500, as well as gift certificates or noncash prizes, will be sufficient to generate considerable enthusiasm if your program is well run. Most employees are motivated to participate as a way of contributing value to and receiving recognition from their organizations.

The most critical elements of a successful employee referral program are clear communication and follow-through. If your employees don't know about the program, the existing job openings, or how to participate, you can have a very attractive program and not generate a single referral.

Create a forum in which to communicate current job openings. This can be an employee bulletin board, newsletter, or the company's intranet site. Publicize the guidelines of the program along with the job openings. Promptly and accurately follow up with referring employees. You want to let them know the status of candidates referred and thank them for their participation. Distribute awards promptly, and make these distributions visible. When employees see their coworkers receiving rewards and/or recognition, they will become more excited about participating themselves.

You do not have to apply your referral program to all positions. You can limit eligibility to specified, hard-to-fill positions. Again, communicate eligibility requirements clearly and accurately. Misunderstanding as to what positions are covered and the nature of the reward will only generate hard feelings—not future referrals.

### ***Should I put up a “Help Wanted” sign?***

Putting up a sign announcing job openings can be a terrific way to generate candidates if you have a high-traffic workplace frequented by potential employees. Your sign should say much more than HELP WANTED. APPLY WITHIN. Like all good advertisements, effective signs are creative and target the customer or client with the greatest potential for becoming an employee. In a retail setting, you might post a sign asking, “Do you tell your friends about our products?”

Your sign should contain specific instructions for how to apply for a job, including a telephone number, fax number, or Web address. When individuals inquire about your sign, instead of merely leaving a stack of blank applications on a table or handing them out, provide an instruction card or flyer describing both the position(s) and the application process. Consider the audience when determining the requirements. It does not make sense, for example, to require a resume for lower-skilled positions.

Consider carefully the location where the candidate will complete the application. It can be distracting and potentially disruptive for customers or your workers to have groups of candidates filling out applications in the middle of an establishment. Distributing a job application for completion “at home” does not guarantee that the candidate will be the person who fills it out. The instructions should direct candidates to an appropriate location, or you might have them return at specified times when business is slower.

### ***Where are the recent college graduates, and how can I attract them?***

Successful college recruiting is not limited to large companies with high visibility. Recruiting from colleges, universities, and graduate schools can be just as effective for filling one position as a dozen. Large companies often receive special treatment for the funding and goods that they provide, but educational institutions recognize smaller employers as strong sources of information, assistance, and potential jobs.

While college recruiting can certainly pay off when a company has a specific opening, the most effective programs flow from ongoing relationships that can provide part-time employees, paid and unpaid interns, and contacts for more experienced workers as well as recent graduates. If you

### WORTH REPEATING: HAND OUT FLYERS

A multilocation restaurant company maps out the locations of transportation routes and nearby colleges and community centers before it prepares to open a new restaurant. Eye-catching flyers are posted in visible locations directing candidates to each new site. A health club company distributes flyers announcing job openings to the runners and cyclists keeping in shape in nearby parks.

are not aware of the college and university resources in your community or for your industry or specialty, begin by locating the applicable schools. Start your research with a basic college guide such as *Barron's Profiles of American Colleges*. These are indexed by location and by major. The guides are written for prospective students, not employers, so you will need to do some additional research to make the best contacts. After choosing the programs or schools that would provide students that best fit your requirements, contact the school's career or internship office.

To develop relationships before openings occur, speak to the career center director, internship coordinator, or head of the department whose students or graduates are of interest to you. Introduce yourself and your company and obtain the following information:

- ◆ Details about the curriculum, to determine whether their students and/or graduates fit your hiring needs.
- ◆ Calendar of on-campus recruiting events, the process for scheduling interviews, and a list of companies that recruit on campus for similar positions.
- ◆ Availability of ongoing job postings for current students and alumni, including how the information is accessed and any costs charged for alumni postings.
- ◆ Guidelines for any paid and unpaid internship programs, including the application process (i.e., Do you meet and approve the intern before the program, or are they assigned?), calendar of internships, hours, and supervision/evaluation required.
- ◆ A list of classes at which someone from your company can guest lecture, or a list of student clubs or pre-professional groups that use

outside speakers. Offer tours of your work site if it might be beneficial for any classes.

- ◆ Calendar of any career fairs, including costs and logistics.
- ◆ Calendar of classes, availability of students for internships, and graduation dates.

Identify any alumni of the school within your company and enlist them to help nurture this relationship. Alumni can establish instant rapport with students as employer representatives at a career fair.

### ***How do I find a recent college graduate in February?***

Don't assume that you can only hire recent college graduates in May or June. Many students graduate at different times of the year. Others graduate without a position or take time off and maintain contact with a career services office.

If you have an immediate job opening, ask your contact at the school for referrals. Career services professionals generally know their students and have contact with alumni. Colleges often have a job posting system that includes alumni as well. Ask to review any available resumes of students who are interested in your industry or geographic area.

Developing ongoing paid or unpaid internship programs will provide valuable resources for recruiting. Internships provide opportunities for an employer to get to know prospective employees and gain motivated representatives who return to campus and spread positive information about the company. Certain colleges have programs with work-study components, through which students work full-time for three to nine months. Consider scheduling work-study students or interns in advance to cover leaves of absence or peak business periods.

### ***What happens at a job or career fair?***

Job or career fairs come in many forms. They range from on-campus career days sponsored by colleges to large programs at convention centers run by recruitment businesses, with events catering to specific needs in between. Participation in a career fair can generate candidates and increase the visibility of a company as an employer.

The cost of participating in a career fair can range from a few hundred dollars for a college or local job fair, to thousands of dollars for a convention center program that promises to attract thousands of candidates. Before making a commitment, speak with other employers that have attended the

fair in the past to evaluate their experiences. Obtain a list of participating companies to determine whether the event is appropriate for your company. A small employer with a small booth will be lost in a sea of very large employers with large booths. Being a “little fish in a big pond” will probably not generate strong candidate traffic flow, and will certainly not improve visibility.

Plan ahead for effectiveness. The following steps will improve results:

- ✓ See that your booth is adequately staffed. It may give many attendees their first impression of your company. If you are setting up at an on-campus career fair, have alumni at the table.
- ✓ Prepare a few key questions for each candidate who presents a resume. Asking the same questions will make it easier for you to remember and rank candidates.
- ✓ Treat everyone who approaches the booth with respect. Don’t forget rules about appropriate and inappropriate interview questions simply because you are standing up or are in a less formal setting.
- ✓ Be prepared to inform promising candidates then and there about the “next step.” This can range from setting up an appointment to discuss an immediate opening to keeping in touch by following up with notes and/or phone calls. Plan to follow up on all resumes using the same process you use for other resumes you receive.
- ✓ Have something at the booth that will catch people’s eye, such as a pen, key chain, or other take-away gift, as well as marketing materials about your organization. You do not need slick recruitment information to display a positive image.
- ✓ Walk around and meet the representatives of other companies. These people can become part of your network for finding job candidates.

### **WORTH REPEATING: SHOW OFF YOUR COMPANY**

A midsize start-up company in a major city held an open house for college students during an industry convention. The students got a tour of the operation and met key managers. The company received name recognition in a competitive industry, collected resumes for future internship positions, and made good contacts at colleges.

## Internet Recruiting

### *Isn't the Web the best place to find candidates in the information age?*

With more than 10,000 Web sites focused on recruitment, the Internet has become a significant source for candidates for many employers. However, before you jump in to make your presence known on the Web, plan ahead. Just as print advertising may not always be the best approach, a Web posting may also fail to generate strong results, especially if done without forethought.

Before even thinking about posting positions on recruitment sites, look at your own company Web site. Whether online job seekers find your site directly or through a recruitment site, their research about your company will start with your site. Your site should be representative of the culture and environment of your workplace, provide good information about the organization, and be user-friendly and easy to navigate. Have a designated location where job openings are posted. Make sure it's visible on and accessible from your home page with a click on a button such as "Careers at XYZ Company."

To maximize the effectiveness of your employment Web page, include information about how to apply for open positions. If you consistently solicit resumes whether or not there are any immediate openings, put this information on your Web site. Be sure to keep the information up to date. Provide a direct link to allow candidates to apply online. Do not force potential applicants to take the extra step of printing an application or mailing or faxing a resume.

### *Shouldn't I just post the opening on a large recruitment Web site?*

Effective use of recruitment sites requires research before you begin. Your first impulse may be to post a job on the Monster board or HotJobs.com. These are huge sites that receive many visitors and have hundreds of thousands of resumes in their databases. They also have job postings from as many companies.

The largest sites boast that they have more than one million job postings worldwide, so you will need to consider whether your posting will attract any attention amid so many listings. Other considerations are the cost, whether your company's name is recognizable, and the geographic area served by the site.

The best time to begin research on employment Web sites is before a need occurs. Internet recruiting can produce outstanding results, but research is time-consuming and job postings are not always immediate. An

easy way to start your inquiry is to navigate one of the largest and most popular sites. Recruitment sites feature separate sections for employers and job seekers. You can get an understanding of what types of jobs are posted—and how candidates get to view the postings—by looking at the job seekers' section. Jobs are usually sorted by category, and browsing these listings will acquaint you with categories used, as well as the geographic location of the jobs on the site.

The employer section of the site provides information about costs for both posting and viewing resumes. Employer sections may also provide facts about the candidate database or typical visitor. Sometimes the site itself does not contain specific cost data or discuss the time it takes for a posting to appear, so you may have to speak to a salesperson.

Once you are familiar with the basic components of a recruitment Web site, you can begin researching other sites. Both *CareerXRoads* and *Weddle's Recruiter's Guide to Employment Web Sites* provide annually updated information on hundreds of sites and addresses for many more. Using these resources, you can identify Web sites that cater to your geographic location or industry specialty. Industry-specific sites can be as all-encompassing as [www.dice.com](http://www.dice.com), with almost 50,000 IT jobs posted, or very specific, such as [www.idealists.org](http://www.idealists.org) for nonprofits. Using a targeted site is likely to increase both the number and quality of responses.

Niche employment Web sites can also be found through a community search, area business groups such as the chamber of commerce, or local newspapers. A local newspaper's online posting will usually be similar to its print advertising. Newspapers also typically post all jobs that appear in print ads on their Web sites.

By doing some research you will be able to find some free sites. The largest one is America's Job Bank ([www.ajb.dni.us](http://www.ajb.dni.us)), a database maintained by the U.S. Department of Labor. This site divides candidates by state and allows employers to search resumes and post jobs without fees.

### ***I have selected my Web sites. How do I design a job posting?***

When you find a site that looks like it could be fruitful, check references with other employers using the site. Check for special offers for first-time posters. Once you post on one site, you will undoubtedly receive offers, by e-mail, to post on other sites. You can get ideas for structuring your posting by looking at existing postings for similar jobs. Your posting should be inviting to a job seeker. As with print advertisements or signs, think about the title and questions or information that will attract a candidate. Unlike traditional print advertising, on the Web you are usually not paying



**WORTH REPEATING: FIND THE NICHE SITE**

A nonprofit in an urban area launched a search for an IT manager. In a highly competitive market, the organization targeted industry associations and sites that expressly served nonprofits. These postings were more effective because they generated candidates who were more interested in working in an environment that serves a public interest than in obtaining the biggest paycheck. Recruitment sites targeted to nonprofits were also cheaper.

by the word or line, so you may include more details. However, if you make the posting too long or too much like a job description, you will risk losing the candidate's attention.

There is frequently a time lag between the submission of a posting and its appearance on the Internet site. The Web site host will be able to tell you when the job is posted and when your listing will expire. If you fill the job or a posted position becomes inactive, remove the posting immediately. You do not want to frustrate potential applicants by posting jobs that are not available.

Most sites have a feature allowing employers to view resumes in their databases, usually for an additional fee. Before paying to view resumes, determine the exact criteria used by the database so you'll know whether the resumes are current and contain the background, skills, geographic location, and salary requirements that match your search.

Larger companies that receive numerous resumes use computer software programs to receive, organize, and track submissions. The larger general recruitment Web sites also offer services or programs that perform these functions. It is unlikely that a small to midsize company will benefit from this technology and recoup the cost involved. If you can screen the number of resumes received, you can then track them through an internal database.

## Search Firms

### *What can headhunters do for me, and what should I look for?*

Recruitment firms can be called many things, from staffing agencies to executive search firms. The most important thing to remember in choosing a firm is that *you*, the employer, direct the search.

When deciding whether to use a search firm, consider your recruit-

ment budget, available time, and in-house resources. The most costly searches are retained searches. Retained searches are exclusive searches where a specific recruiter is hired to fill a position, usually for a fee of up to one-third of the position's annual compensation. Generally, there is an up-front "deposit" and charges for expenses, with the balance payable after a hire is made. Before you agree to a retained search, clarify the types of expenses that will be reimbursable and the methods that the recruiter will use in conducting the search. Remember that once you sign an exclusive agreement, you must pay a fee even if you hire a person that you located through another source.

Contingent search firms charge a fee equal to a percentage of a candidate's annual compensation, but you only have to pay this fee if you hire a candidate introduced to you by the firm. Therefore, you can use several contingent search firms simultaneously to fill one position.

Many search firms will negotiate the amount of the fee that they charge. Searches for a 20 percent fee for nonexecutive positions are common in some areas and industries, and it is possible to obtain even lower rates. When negotiating a fee, be clear about what will be included in the calculation of compensation. If the position includes an incentive or bonus, the fee is typically based on the maximum that can be earned. Most search firms will offer some type of guarantee or reduction in a subsequent fee if a candidate does not remain employed for a specific period. If the search firm does not offer you a guarantee or reduction, ask for one.

While a nonretained search may offer a cost advantage, be aware that the quality of contingent search firms varies widely. An inferior firm will often produce an abundance of candidates who have not been well screened. Be firm and clear with the person conducting the search. State your requirements, the steps that you have already taken to locate candidates, and your preferred means of communication and scheduling. Do not let a search firm talk you into a candidate. If the consultant assigned to your search does not meet your needs, request a different one.

Even if you make an offer to a candidate identified by a search firm, do not let the firm handle the salary negotiations or complete the reference checks. Chances are they will not be as diligent as you. If the firm informs you that it has already conducted reference checks, request copies of notes or records of conversations and follow up to verify or add to the information.

***I heard there are tax breaks for hiring certain people. What are they and how can I get them?***

One valuable and often overlooked source is the group of programs designed to employ people with disabilities or move individuals from welfare to work.

There are many reasons for hiring people with disabilities and utilizing welfare-to-work programs to fill entry-level positions. Often, these programs can be a good source for candidates in low unemployment locations where employment ads do not produce results. Financial incentives are often available to employers to hire from these sources, and they provide a satisfying and visible way to give back to the community.

Under disability and welfare-to-work programs, participants complete preemployment training before they are referred to employers. At minimum, this training includes job readiness classes where students learn resume and interview skills, plus lessons about responsibility, accepting supervision, and the importance of good attendance. During the training and in the interview and placement process, job coaches or counselors guide participants. These counselors help determine if there is a match between the candidate and the job opening, and resolve issues that occur on the job. They also can coordinate supplemental benefits (such as government-provided transportation, child care, and clothing allowances) available to the individual and financial incentives for the employer. This training and counseling is not available to you when you hire someone “off the street.”

To find disability and welfare-to-work programs, you can start with local business alliances, such as chambers of commerce. Qualified applicants with disabilities can be located through vocational rehabilitation or education departments in each state. These groups will be listed in the telephone book under state government agencies. Other links can be found through the Department of Labor and the Social Security Administration. Each state also operates offices to help people with disabilities and One-Stop employment centers for employers and job seekers.

## CONDUCTING THE INTERVIEW

### *How do I make the most of the interview process?*

Just as candidates should prepare for interviews, an employer needs to prepare as well. The first step is to conduct a brief prescreening with the applicant to determine whether the candidate meets the basic requirements of the position and is appropriate for an interview. This is generally done by telephone, but may be handled in person, at a career fair, for example. The prescreening can be conducted by an employee with a minimum amount of training and should seek to determine the following information:

- ◆ *Does the candidate meet the skill or knowledge requirements of the position?* This can be determined with a few basic, structured questions that are used for all candidates.
- ◆ *What is the candidate's salary requirement?* Many people believe that an employer should not discuss salary early in an interview process. However, you do not want to waste time interviewing someone for a \$60,000-a-year job who is looking for \$120,000 a year. If the candidate does not want to answer this question directly, ask for a range. Avoid disclosing the salary range for the position until you have learned more about the candidate, because the individual may be more qualified for a different position with a different rate of pay. If the salary or wage is fixed and nonnegotiable, just ask the candidate if it is an acceptable rate.
- ◆ *Does the position meet the candidate's criteria?* People have different interpretations of job titles. Provide a brief description of the position, including any details about hours or requirements.
- ◆ *Are there logistical considerations that would affect the candidate's ability to perform the job?* Obtain information such as days, hours, and locations at which the applicant can work, and the individual's availability for an interview.

### ***How do I develop incisive interview questions?***

Outline your interview questions in advance and you will be more likely to obtain all of the information that you need during the interview.

Review the resume and the prescreening documentation as a starting point for questions that should verify, clarify, and elaborate on any information provided. If there is any gap in employment or unusual positions or accomplishments, you will want to develop questions to gather additional details. Do not limit yourself to questions based on specifics already detailed in the resume or application. While it is important and useful to ask questions that verify information, well-prepared questions will provide a wealth of insight beyond what the candidate has chosen to tell you on paper.

Ask behaviorally based questions rather than questions that will merely elicit feelings or opinions. Behaviorally based questions focus on what the individual actually did in a given situation. For example, asking, "Are you a good team player?" is likely to bring forth a response such as, "Yes, I love to work with people." However, asking the candidate to describe a time when he or she was successful at getting buy-in from others will give you an actual example rather than a potentially biased self-assessment.

Behaviorally based questions can be used to determine a candidate's

actual job experience and to assess skills that are less structured and less easily defined. If the job requires the management of multiple tasks, ask: “Can you describe a time when you managed multiple tasks? What strategies did you use and how successful were you?” These types of questions are also good predictors in interviews with candidates who may have the talent but not the direct experience. For example, if an individual without previous supervisory experience applies for a position that supervises others, ask this candidate to tell you about situations in which he or she led a team, committee, or group or demonstrated leadership.

Ask open-ended questions, not closed-ended ones that can be answered with a yes or no. Closed-ended questions do not create a conversation and will not provide the information needed to make a decision about a candidate. They are only appropriate for eliciting specific facts. Here’s a closed-ended question about business growth: “Have you been involved in a business that went through an expansion?” The open-ended version asks, “Describe a time when you worked in a company where there was an expansion, including your role, and describe the results of the actions you took.” Which is more likely to give you better insight into whether the candidate could help your company in a period of rapid growth?

Interviewers often select very common, overused questions, such as asking the candidate to describe his or her strengths and weaknesses. Here you are practically guaranteed to receive an answer that has been rehearsed in advance. A more effective way of asking this, and making it more relevant to the conversation, would be: “Describe the strengths you would bring to this position.”

An oft-repeated query of an interviewer who did not prepare specifically for the interview is, “Tell me about yourself.” The candidate is sure to have a rehearsed response ready, and when the interview is over, the interviewer will have learned little. You and your own interviewing experience are an excellent source for interview questions. So are other managers who conduct interviews. Ask them to provide examples of questions they have found to be effective.

### ***What is an illegal interview question?***

If a question does not relate to the candidate’s qualifications and ability to do the job, there is no reason to ask it during an interview. Questions that have the effect of discriminating against a candidate by screening for age, sex, marital status, race, ethnicity, religion, disability, and, in many locations, sexual orientation are illegal. Many questions that appear innocuous can actually be considered discriminatory. The following guidelines include

questions that can and cannot be asked in some of the most common categories:

- ◆ *Marital Status.* Questions about marital status including, “Do you plan to have children?” and “How much money does your husband make?” do not relate to the applicant’s ability to do the job and can be viewed as discriminating against women. To determine availability for work or long hours, it is more appropriate to ask, “What hours can you work?” or “Are you available for overtime?”
- ◆ *Race or National Origin.* Examples of questions that are illegal include: “What country are you from?” “What kind of name is that?” “Is English your first language?” “Were your parents born in the United States?” You may ask if the candidate can read or write English or another language if these skills are job-related. You may also ask whether a candidate has the legal right to work in the United States, since this is a requirement for employment.
- ◆ *Age.* Federal law prohibits discrimination in employment against anyone over the age of forty, so employers should never ask applicants their age, or any age-related question such as, “What year did you graduate from high school?” To determine a candidate’s legal eligibility to work, an employer can ask, “Are you eighteen years of age or older?” Other improper questions include, “How long do you plan to work before you retire?” It is appropriate to ask about short- and long-term career goals.
- ◆ *Religion.* Interview questions such as “What is your religion?” or “Do you go to church?” are prohibited. They are not job-related and can be considered discriminatory against candidates of different religious beliefs. Since employers are required to make reasonable efforts to accommodate religious observances, it is also inappropriate to ask, “Does your religion prohibit your working on Saturdays?” or “Are there any holidays on which you cannot work?”
- ◆ *Disabilities.* Under the Americans with Disabilities Act, employers are prohibited from asking questions about an applicant’s disabilities during the preemployment process. Employers cannot ask questions such as, “Have you ever filed a worker’s compensation claim?” or “Do you have any disabilities that would interfere with your ability to do this job?” If the candidate has an obvious disability or discloses a hidden disability during the interview process, you can ask how the candidate would perform a particular job or whether reasonable accommodations would be needed. You can also show a list of the job responsibilities to the candidate, followed by the question, “Are you capable of performing these duties with or with-

out reasonable accommodation?” An employer can ask about a candidate’s attendance record at previous positions, since absences can be caused by many reasons other than disability. Questions about attendance records must not include the reasons for absences.

◆ *Arrest and Conviction Records.* Because most arrests do not result in convictions, questions about arrest records can be interpreted as biased against particular minority groups. If you consider a record of conviction in making an employment decision, you must be able to demonstrate a business necessity for the requirement. When in doubt, refrain from asking about convictions during interviews. (See the section on Preemployment Testing and Screening, later in this chapter, for information on conducting background checks.)

◆ *Credit History.* Questions about a candidate’s finances, such as “Have your wages ever been garnished?” and “Do you own or rent your home?” are illegal. (See the section on Preemployment Testing and Screening for guidelines.)

◆ *Personal Questions and Other Inappropriate Inquiries.* Personal questions that are totally unrelated to job requirements should always be avoided, even if there is no discriminatory intent behind them. “Do you have an active social life?” or “Do you belong to any groups, clubs, or societies?” are examples of questions that can be seen as having a sex, ethnicity, or other improper bias. Trick or cute questions are inadvisable, whether or not they are illegal. A trick question that is designed to mislead or catch a candidate off-guard—such as, “You were only at your last job six months. Why were you fired?”—may unnerve and annoy the prospect, and is unlikely to add to the discussion. Also avoid “cute” inquiries such as, “If you could be any animal, what would you be and why?” There are certainly better ways to elicit information.

As a rule, if you design your questions with the purpose of bringing out information about the candidate’s work experience, judgment, character, and maturity, you will be best equipped to make sound hiring decisions.

### *I’ve planned for the interview. Now what?*

After you have adequately prepared for the interview, it is time to meet the candidate. There are four distinct parts to a successful interview.

*Part 1: Welcoming the Interviewee.* Begin by making the candidate comfortable and the setting productive for a conversation. Have a prepared, genuine welcome statement, which can be as simple as a making a comment on the weather, thanking the candidate for finding your office if it was a diffi-

**BETTER FORGOTTEN: “I SCOOPED ICE CREAM, TOO!”**

A recruiter for a major pharmaceutical company spent 90 percent of an interview reminiscing with a candidate about their common experiences working at Howard Johnson’s during high school. It was a pleasant and enjoyable conversation with virtually no information shared about the candidate’s more relevant work experience for the job opening.

cult trip to make, or remarking on a common alma mater. It is important to keep the welcome brief and not to let it evolve into a lengthy discussion that eats into the interview time.

Conduct the interview in a quiet, private location without interruptions. Nothing makes a candidate feel more unwelcome or unimportant than to have the interview interrupted by telephone calls, pagers, or knocks on the door during an interview.

*Part 2: Asking Questions to Determine Qualifications.* After you develop rapport with a candidate, turn the conversation to specifics about the candidate’s background and qualifications for the position. This is the time to ask the questions that you prepared in accordance with the guidelines earlier in this chapter. Tell the candidate that you may ask additional questions at other points in the interview, which you will do if you realize that you need additional information or clarification.

Avoid a “halo effect” that limits the questions you ask. A halo effect occurs when some characteristic, shared experience, or qualification of the candidate so overwhelms the interviewer that he or she assumes the candidate is perfect and does not follow through with enough questions to determine the candidate’s appropriateness for the job.

*Part 3: Allowing Time for Candidate Questions.* When you have asked all of the questions you feel are necessary, offer the candidate time to ask questions. A candidate for a management position who does not have questions obviously has not prepared and may lack business acumen. If you cannot answer a question, respond honestly. If the answer to the question can be determined from another source, tell the candidate that you will get the information and follow up later.

This is the time to “sell” the candidate on the company. The individual should leave the interview with a basic understanding of the company and



the position, and the sense that the organization will be a good place to work. Never do all of the talking. When an interviewer dominates a conversation, it is likely that the candidate will not have the chance to provide the information you need to make a sound hiring decision.

*Part 4: Concluding the Interview.* A proper close to an interview is just as important as an appropriate opening. This is your opportunity to ask any additional questions. Explain the next steps in the interview process. Next steps may include determining the candidate's availability for further interviews, or just stating that the results of the interview will be reviewed and the company will get back to the individual by a specific date.

An interview may provide job candidates with their first impression of your company. Remember that when people are treated inconsiderately during the interview process, word spreads rapidly throughout the employment community. Strive to make a favorable impression on all candidates, whether or not you ultimately hire them.

### **BETTER FORGOTTEN: DON'T PUT THE CANDIDATE IN THE HOT SEAT**

While conducting an interview in a conference room as part of a college recruiting trip, an HR executive from a large national company nixed a candidate who did not maintain eye contact during the interview. For the next candidate, the interviewer changed seats only to find out that the previous candidate had been staring straight into strong sunlight. This applicant was too young and eager to point out the problem to the recruiter. Check your environment before making a mistake that puts a candidate at a disadvantage.

## **PREEMPLOYMENT TESTING AND SCREENING**

The hiring process does not end with the interview. As a responsible employer, you may want or need to take additional steps to assist in the hiring decision. These steps include doing preemployment testing, background checks, reference checks, and any medical screening.

### ***Should I require candidates to take a skills test?***

Many employers require a candidate to complete one or more preemployment tests. An extensive range of tests is available, and they can be helpful as long as you select an appropriate test.

◆ *Basic Skills Tests.* Employers have administered basic skills tests for years, most commonly to measure typing and computer abilities. These tests are easy to define and administer. They can be designed in-house, requiring the candidate to complete all or part of a typical assignment, or purchased from a vendor and administered in-house or online. For certain technical positions, a math or use-of-tools test may be appropriate.

If you conduct a skills test, it is essential that the components of the test are relevant to the job and that the test be administered uniformly to all candidates for the position. Uniform administration must extend to the location and format of the test, including any technology used.

◆ *Soft Skills Tests.* Tests have also been developed to measure “softer” skills that are required for a job. For a service environment, the test may include questions or specific examples of situations that you want the candidate to respond to, or it may be targeted toward determining whether the individual uses polite, positive language in responding to requests.

Less specific are psychological tests designed to target personality types determined to be best suited for an occupation. For example, an individual applying for a position that requires completion of inventory and record keeping might be tested for attention to detail. Before using psychological tests, make sure that they are actually relevant to and useful for your candidate evaluation. It could be difficult to justify the use of this type of test for all employees in an organization where there are a variety of positions and a range of interaction with others.

◆ *Validation of Tests.* For any test to be a useful measure and to be considered nondiscriminatory, it should be validated. Validation means that there is a demonstrated correlation between people’s performance on the test and their performance on the job to the standard measured by the test.

The Equal Employment Opportunity Commission, in coordination with the Civil Service Commission, Department of Labor, and Department of Justice, has issued guidelines and standards for the use of tests and selection procedures. The guidelines include that:

- ◆ The work behavior or activity that is being measured must be related to job performance.
- ◆ Employers are not required to conduct validation tests but are encouraged to use tests that are validated.
- ◆ The scoring, whether it is a specific target score or a pass/fail, must be clear and applied uniformly.

Any test or procedure that has an adverse impact on any protected class is considered discriminatory. For example, if more men than women are

selected based on the results of a test, it is discriminatory and therefore illegal.

The cost of testing can vary widely. Some test providers charge for administering and scoring each test; others train employers to do so and charge user's fees. Your cost analysis should include how much time you will spend on testing, as well as the potential reduction in turnover and recruitment costs resulting from using an effective test. Check a variety of references including, if possible, individuals who took the test and were hired based on the results. Request sample tests and a trial period from any third-party test provider.

In some situations, a testing company will provide additional research and customization if your company volunteers as part of a test site for a new product. This is a good way to get a targeted test, as long as validation is built into the process.

### ***What do I need to know about preemployment drug testing?***

Drug testing is more fully discussed in Chapter 9. If you decide to do preemployment drug testing, select a reputable company. Ask how the test will be conducted and determine specific drugs to be screened.

### ***Can I require applicants to take preemployment physicals?***

If you require a candidate to take a preemployment physical, you must ensure that the recommendations, results, and subsequent decisions made about the applicant do not violate the Americans with Disabilities Act (ADA). Generally physicals are conducted after an offer is made. These exams are costly and time-consuming and should only be considered for employment situations that require specific information related to performance and the potential need for reasonable accommodations. (See Chapter 8 for more information on ADA compliance.)

### ***How do I conduct an effective reference check?***

Reference checks seek to obtain written or verbal verification of information and/or opinions about qualifications and past performance. Almost anyone in your organization can conduct a minimum reference check to verify information from previous employers or educational institutions. Someone comfortable asking open-ended questions to obtain information should conduct reference checks that seek opinions. Do not merely contact

the human resources department of the candidate's previous employer for a reference. This is especially true when hiring a manager, salesperson, or other key employee, when it will be important to speak with supervisors, subordinates, peers, and sometimes even customers, depending on the nature of the job responsibilities.

As in an interview situation, ask questions designed to elicit specific information. Instead of asking "Was Tom a good performer?" ask, "What results did Tom produce?" This is also a good time to gain a different viewpoint on the candidate—such as the individual's relationships with subordinates, management style, and other perspectives. Write up the results of all reference checks in a consistent format, including the date, the name of the person spoken to, and the details provided.

Often, a candidate will offer written letters of reference. While these letters are sometimes helpful, they are typically form letters lacking in details that will aid your decision-making process. Letters of reference are not a substitute for good reference checks. If a candidate is employed, do not call the current employer. If you feel you must have information relating to this job, ask for the name of a former employee of the company.

### ***What is a background check, and do I need to conduct one?***

Background checks provide history about a potential employee from sources outside of previous employment. Criminal records, motor vehicles records, and credit reports may be part of a background check. The law requires that the extent of the preemployment background check be appropriate in relation to the specifics of a job. If a position requires someone to drive a vehicle, conduct a motor vehicles department check. You may want to retain a background check company because such companies may have quicker access to information than you would.

When information about a criminal record is used to make a hiring decision, the use must be based on a business necessity. You should consider the nature and seriousness of the offense, the time elapsed since conviction or incarceration, and how the offense relates to the job. Criminal record checks can be complicated, because they require access to multiple jurisdictions. When contracting with companies to conduct these checks, ask how they obtain the information and how long the check will take to complete. State laws vary when it comes to whether an employer can deny employment based on a previous conviction. Check with counsel before acting.

Some employers also conduct credit checks when hiring for a position involving financial or cash-handling responsibility. If you conduct any

background check, credit check, or reference check through a third party (i.e., someone other than a company employee), you will be covered under the Fair Credit Reporting Act (FCRA). FCRA has specific guidelines for the use of credit checks and other defined “consumer reports” that require that the employer obtain the prior consent of the candidate. Under FCRA, you will also be required to make certain disclosures to the applicant if the information contributes to your making an adverse decision. Because employers that violate the provisions of FCRA may suffer significant legal consequences, it is important that you understand your responsibilities before allowing any outside parties to perform any investigations regarding a candidate. You can obtain more information about your obligations under FCRA through the Federal Trade Commission.

### **A Side Note: Negligent Hiring**

Companies that fail to conduct adequate reference or background checks on potential employees may be liable in court for negligent hiring. Negligent hiring is a legal concept that holds an employer responsible for injuries caused by its employees if the employer failed to make reasonable inquiries into employees' backgrounds and their suitability to hold a position. Most negligent hiring lawsuits are based on the premise that an employer hired an employee without obtaining available information about this individual's criminal, violent, or other dangerous tendencies, and placed the employee in a position where he or she could harm coworkers, customers, or members of the general public. An employer can be held responsible for negligent hiring whether or not its employees are acting within the scope of their jobs.

## **MAKING THE JOB OFFER**

### *How do I decide on a candidate and make a job offer?*

All too often, hiring decisions are made without thorough review and analysis. Studies have shown that interviewers frequently make up their minds during the first few minutes of an interview and use the rest of the conversation to validate their decisions. They may not check references and in-

stead go straight to a job offer. The total cost of replacing an unsuccessful hire can be as high as several times the individual's annual earnings, depending on the level of responsibility of the position. Time spent making the correct hiring decision is decidedly cost-effective.

When you have completed the steps in the hiring process, review all available information before making your decision. Rank the candidates in order of preference. Obtain detailed feedback—not merely a yes or no—backed by clear information from everyone who met the candidate.

If you are hiring for a position that is paid an hourly rate, you can extend an offer to the candidate as soon as you have reached a decision. Think of the job offer as an opportunity to welcome an employee to your company. Congratulate the individual and provide details about the rate of pay, date, time, and location where they are expected to report to work, and name a person the new hire can contact with additional questions.

### *How do I negotiate a job offer?*

If you are hiring for a salaried position, especially a key position in the company, you should expect to negotiate the job offer with the candidate. Before you begin, you must understand all of the potential parameters of the compensation that will be offered. Employers typically make offers at 80 percent or 90 percent of the maximum they are willing or able to pay. The individual making the offer should understand all of the forms of compensation, including base pay, bonuses or incentives, and the value of additional benefits. Decide in advance issues such as the potential availability of sign-on bonuses, relocation assistance, and reimbursement for any other expenses.

Sign-on bonuses are paid to attract a candidate and/or to compensate a candidate who has the potential to lose bonuses or incentives when accepting a new position. They are typically paid out over a specified period of time. Some organizations require employees who leave within a year to return a part of their sign-on bonuses.

If you are offering relocation expenses, state specific guidelines. Your company may have an existing policy detailing exactly what is covered, a maximum dollar amount allowable for the move, or even a single payment of a specified amount.

Before you offer or agree to any variations in benefits, inquire whether changes are allowed under your benefits plan. For example, your benefits contract may not permit you to move up an eligibility date for medical coverage. In this situation, you might offer to reimburse COBRA costs to continue benefits up to the eligibility date.

**BETTER FORGOTTEN: “DID YOU READ THE OFFER LETTER?”**

A senior manager in financial services eagerly awaited an offer letter after a verbal negotiation for a new position. When the letter arrived, it included a base salary that was 20 percent less than the verbal offer. The hiring manager had not carefully read the offer letter.

***I know what I want to pay. Why should I negotiate?***

If your company is not willing to negotiate a job offer, you must realize that you are setting the tone for a working relationship. A candidate for a sales or marketing position or any senior role should be expected to ask for more than the offer. This is a good opportunity to assess the individual's negotiating skills. Do not give an immediate answer during a negotiation, and don't expect an immediate response to an offer. A career change is an important decision; you do not want to pressure job candidates before they have had the opportunity to carefully consider your offer.

***Should I put the offer in writing or have the employee sign an employment contract?***

Employers commonly follow up verbal offers with written offer letters providing details of benefits. It is essential that these letters accurately reflect the verbal offer. When promised or requested, provide offer letters promptly. Never send an offer letter by e-mail to a candidate at work. Even if the candidate prints out the letter and deletes the file, it is still retained on the employer's server. Any offer letter should specifically state that it is not a contract for employment. The effectiveness and defensibility of employment contracts and noncompete agreements varies widely. If you are considering the use of an employment contract, it should be drafted and reviewed by legal counsel.

***The selection process sounds like a lot of work. Do I really need to take all this time?***

The employment process is very time-consuming. It is impossible to expect a positive outcome by cutting corners. You cannot speed through an inter-

view or reference check and hope to gain the information needed to make a decision.

A good interview and selection process is an investment. It is the first impression for a future employee, and the process will set the tone for the working relationship. And taking care in this investment will greatly increase the chances that you and your new employee will have a mutually beneficial relationship over the long term.



# HR Policies

## Why Do We Need Them and What Should They Look Like?

**A**ll organizations have some type of policies and procedures. There are practices regarding what time to report to work in the morning, how much vacation time an employee may take, and the days when paychecks are released. Without these rules, it would be virtually impossible to run a business efficiently.

Although all organizations have policies, the manner in which they are documented and presented to employees varies considerably. There are companies with extensive policy manuals and those in which nothing is formalized in writing. Some businesses write their procedures in great detail, leaving nothing to individual interpretation; others present only broad, general provisions. Other than practices specifically required by law, there are no specific rules on how to document and implement the principles and practices by which a business is run. Therefore the form, substance, and tone of an organization's policies and procedures are totally within your discretion as a business.

This discretion presents both a challenge and an opportunity for a business. The challenge is deciding among almost infinite choices on how to define, structure, implement, and communicate the company's rules of operation. As for the opportunity, a sound and appropriate set of policies will lay the groundwork to support the company's business objectives, provide

employees with the necessary guidance, and achieve the desired organizational culture.

### *Should our company policies be in writing?*

Having a set of written policies enhances employee understanding of company rules and expectations, and encourages communications between employees and supervisors and among workers in general. It is neither necessary nor desirable to have *every* rule and practice documented, but it is advisable to take the time to formalize the important ones. In addition, having certain policies in writing—such as rules prohibiting unlawful discrimination and harassment—may save an organization a lot of time and money in the event of a lawsuit.

## THE EMPLOYEE HANDBOOK

The employee handbook is the most common way of documenting policies and procedures. If you have worked for several employers, you have probably seen a variety of handbook types and styles, or even worked without a handbook.

### *Should our company have an employee handbook?*

Some organizations pride themselves on informality. They believe that an employment or policy handbook only adds needless bureaucracy. Other businesses, fearful of lawsuits, are afraid that they will “say the wrong thing” in the handbook and unwittingly encourage employee lawsuits. While it is true that a poorly crafted handbook may create legal troubles, the advantages of having an employment handbook far outweigh the negatives.

A good handbook serves a variety of useful purposes. The document informs employees about company policies, procedures, and practices and can communicate expected standards of performance and conduct. The handbook is a reference guide to help managers and supervisors take appropriate actions in a given situation. Without the handbook, supervisory employees are left to their own devices, which can lead to uninformed, inconsistent, and possibly illegal decision making. A well-designed handbook can positively influence employee morale and promote employee loyalty. It can introduce a new employee to the organization, providing information about company history and facilities and helping the individual to fit in more easily. In addition, the manual can create a sense of consis-

tency of practice that will enhance the employee's feelings of being treated fairly.

Provided that the employee handbook is carefully drafted, it can be an important tool to *avoid* liability in employee lawsuits. The employer that clearly states policies against discrimination and harassment based upon race, color, gender, religion, sexual orientation, age, or other protected status; outlines grounds and procedures for termination; and follows these guidelines over time will be in the best position to defend against charges in these areas. While state and federal laws sometimes require that certain policies and procedures be posted on employee bulletin boards or other public places, distributing a handbook to all employees ensures that the company's critical standards are accessible to all and that each employee will have a reference when questions arise.

### ***Where do I begin in developing an employee handbook?***

The task of preparing an employee handbook can seem daunting to smaller organizations or to employers without large human resources staffs. But keep in mind that the basis for most of the material in the handbook already exists in your organization. Even if you have never before had an employee manual, you are already operating under a system of informal or unwritten policies and procedures. You may even have already documented some of them in internal office memos. Think of your handbook as a formalization of standards and practices that, to a large extent, already exist.

There is no single way to write a handbook and there are no established rules regarding the inclusion of policies and procedures. Some organizations choose a formal writing style; others a more friendly, conversational tone. Many of these decisions are up to you, the employer, and depend on the unique culture of your organization.

Whatever you do, avoid the temptation to merely copy another organization's handbook. Laws vary widely from state to state, and practices differ depending on the industry or labor market. What may be applicable to one employer may not be relevant to your organization. In addition, if you do not take the time to develop your own employee handbook, your organization will miss out on the opportunity to convey to employees the elements that make your organization unique.

### ***What policies should the employee handbook contain, and how should I organize it?***

In general, an employee handbook should contain answers to the questions most frequently asked by employees. Furthermore, the employee hand-

book should have information pertaining to basic employment matters that all employees should be aware of.

The best employee handbooks are organized logically, with the policies grouped into sections. The pages should be numbered and there should be a good table of contents so employees can find specific topics easily. Here are examples of frequently used sections and the policies and procedures that might be contained in each.

### **Introductory or “Welcome” Section**

This section of the handbook serves as a welcome for new hires and an orientation for existing employees. It generally includes information about the history of the organization, its mission and values, as well as an explanation about the purposes of the employee handbook. Many handbooks begin with a letter of welcome and appreciation from the head of the organization.

Because the introductory section is usually the first part of the handbook that people read, it will influence employees’ impression of the employer and their willingness to continue reading the policies. Make sure that the tone you set in this section is consistent with the way you want your employees to view your organization and its leadership.

### **Equal Employment Opportunity (EEO) Policies**

Begin this section with a statement that the organization is committed to equal employment opportunity and a healthy work environment that’s free of discrimination and harassment of any kind. After this initial statement, the section should detail the individual policies, including:

- ◆ EEO policy (affirming the organization’s commitment to providing equal employment opportunities to all, regardless of gender, race, religion, sexual orientation, age, marital status, and other protected status, and to following the law in all respects in connection with providing a fair work environment)
- ◆ Antiharassment policy (prohibiting harassment based upon gender, race, religion, sexual orientation, age, or any other protected category)
- ◆ Americans with Disabilities Act (ADA) policy

### **Employment and Compensation Policies**

This section contains the policies regarding the day-to-day nature of an individual’s employment and compensation. Topics can include:

- ◆ Hours of work
- ◆ Meal/break times
- ◆ Attendance policy
- ◆ Overtime policy
- ◆ Time records
- ◆ Pay periods
- ◆ Transfers and promotions
- ◆ Performance appraisal system
- ◆ Personnel records
- ◆ Introductory/probationary period
- ◆ Standards of conduct
- ◆ Dress code
- ◆ Solicitations, distributions, and use of bulletin boards
- ◆ Confidential information policy
- ◆ Theft of company property
- ◆ Smoking policy
- ◆ Employment of relatives
- ◆ Electronic communications policy

### **Time-Off Policies**

This section contains the organization's policies related to time away from work, both paid and unpaid. Policies and procedures covered here can include:

- ◆ Vacation time
- ◆ Personal days
- ◆ Sick days
- ◆ Holidays
- ◆ Bereavement leave
- ◆ Jury duty
- ◆ Military leave
- ◆ Family and Medical Leave Act
- ◆ Unpaid leave of absence

### **Employee Benefits**

The handbook should describe general information regarding benefits offered to employees, including the availability of:

- ◆ Health and dental insurance
- ◆ Life insurance
- ◆ Short- and long-term disability insurance
- ◆ 401(k) plan
- ◆ Pension plan
- ◆ Flexible spending accounts
- ◆ Tuition reimbursement policy
- ◆ Workers compensation benefits

## **Employee Safety Policies**

In this section, emphasize the organization's commitment to the safety of its employees and include those policies reinforcing that commitment, including:

- ◆ Safety rules
- ◆ Procedures for reporting an accident
- ◆ Emergency procedures
- ◆ Procedures for responding to and preventing violence in the workplace
- ◆ Policies prohibiting workplace substance abuse

## **Corrective Discipline/Termination Policies**

This section is particularly important from a legal perspective. While progressive discipline and termination policies can be helpful in defending against wrongful termination lawsuits, courts will closely scrutinize these policies when these suits arise to determine whether they were (a) reasonable and (b) consistently followed by the employer. Avoid inflexible, highly detailed disciplinary and corrective action procedures, because there is a good chance that your managers will not follow them to the letter. Corrective action policies should include language that allows the employer the discretion to skip any or all of the steps of the disciplinary process. Policies covered under this section might include:

- ◆ Open door policy
- ◆ Internal complaint procedures
- ◆ Progressive disciplinary procedures

- ◆ Internal investigations and searches
- ◆ Dismissal
- ◆ Resignation

### ***Should I have a severance policy in the employee handbook?***

To retain the maximum flexibility in your company severance policy, we recommend that you do not formalize this policy in writing in the handbook. If you do not have a written severance policy, you will have more freedom to offer individualized packages to terminated employees that take into account the specific facts of the termination (see Chapter 10). If you publish a set policy in the handbook, such as “Employees terminated for reasons other than cause will receive two weeks’ severance for every year worked,” you may create legal problems should you pay a specific employee more or less than that amount.

### ***Are there any stylistic considerations in writing the handbook?***

Keep in mind that a diverse population of employees will be reading this manual. Write in clear and simple language so that all employees will be able to understand the intent of the information presented. Avoid ambiguity. Draft policies carefully so that they will be interpreted the way you mean them to be. Do not use excessively small print, and leave plenty of white space on each page, so that the material will be easy to read and won’t intimidate the reader.

Avoid words or phrases that commit you to act in a certain way in all instances, such as “will,” “must,” and “employee rights.” Instead, use words such as “may,” “can,” and “generally.” For example, in your internal complaint policy, instead of saying, “The human resources department will respond to complaints within five days,” you might say: “The human resources department will try to respond to complaints within five days.”

Use a positive tone throughout; do not adopt a punitive posture. As an example, consider the wording for a simple vacation policy:

**In order to properly schedule vacation time and assure that the organization meets its staffing requirements, employees should submit their vacation requests at least thirty days in advance.**

Now, compare the previous example with the following wording:

**Vacation requests not submitted at least thirty days in advance will be denied.**

They both provide the same notice requirement, but which do you think employees would view more favorably? If possible, explain the reasoning behind certain policies, especially those that are likely to be seen as controversial.

*What legal issues do I need to look out for in creating the handbook?*

Many employers resist the notion of adding legal language to the employee handbook. Understandably, most organizations want an employee-friendly document, not a legal instrument that could alienate and frighten employees. However, in creating your handbook, the most important legal consideration is ensuring that your policy manual will not be interpreted as an employment contract, or a guarantee that employees can remain employed as long as they follow the policies described in the handbook. For this reason, you will need to add legal disclaimers to the document.

Disclaimers should appear prominently within the handbook—in large and/or bold type—and they should be repeated several times if the handbook is particularly lengthy. Examples of possible disclaimer language are as follows:

**This handbook is not intended to create an employment contract, express or implied, and in no way serves to modify the “at will” employment relationship between the employee and employer. Either party may choose to terminate the employment relationship at any time, with or without cause or notice.** (This disclaimer emphasizes that nothing written in the handbook creates a guarantee of continued employment for the employee, and that either the employer or the employee can end the employment relationship at will.)

**This handbook is intended as a guide only, and is not intended to be a complete description of the employer’s policies and procedures.** (This allows the company to have policies and procedures that are unwritten—such as severance practices, as discussed previously—or in writing, but not contained in the handbook.)

**This list is intended as an example only, and is not intended to include all acts that could lead to employee disciplinary action.** (This statement allows you to discipline or terminate an employee for a reason that is not specifically mentioned in your progressive disciplinary policy.)



**This handbook supersedes all previous information concerning the subjects discussed herein, whether oral or written. The employer reserves the right to modify the policies and procedures contained herein at any time.** (This disclaimer indicates that earlier versions of the policies contained in the handbook no longer apply, and that the company is free to make changes to the information in the manual at its discretion.)

**This handbook can only be changed in writing, by [the head of the organization].** (This disclaimer prevents employees from claiming that their supervisor, or other member of the company, authorized a deviation from the written policies and procedures.)

### *Do I need to get an attorney involved in the process?*

Although you can save a considerable amount of money by drafting the handbook yourself, it is advisable to submit a draft to an attorney for review and fine-tuning before releasing it to employees. In this way, you can ensure that the policies comply with all applicable laws and that your disclaimers are adequate to protect you when the need arises.

#### **BETTER FORGOTTEN: “WHAT STATE ARE WE IN NOW?”**

A medium-size appliance company acquired a competitor in another state and doubled the size of its workforce overnight. The human resources manager immediately distributed the current employee handbook to the new employees. The handbook was not compliant with the state laws of the acquired business, and the safety procedures described had no relevance to the new facility. Mergers, acquisitions, and other major changes require a reassessment of policy materials.

### *Is there anything else I should consider as I’m writing an employee handbook?*

- ✓ Remember that the handbook is intended to outline the organization’s significant policies and procedures, not to cover every situation that may arise in the course of the employment relationship. Focus on those issues that are most relevant to you as an employer, not situations that seldom, if ever, arise or apply to only a small group of employees.

Address the document to the majority of well-intentioned employees who wish to understand and abide by the company's policies, not the errant few that will inevitably violate them.

- ✓ Do not duplicate details that are covered in other employee publications. For example, while you may want to include a brief statement of employee benefits and an outline of eligibility for coverage, there is no need to address at length information that is provided in the organization's benefits information package. In these instances, the handbook should simply tell employees where they can obtain further information.
- ✓ Avoid including information that is subject to frequent change, because this will quickly render a new handbook out-of-date. For example, a detailed description of the use of the company's time clock system may require updating if you should purchase another model or type of system. It is advisable to omit these instructions from the handbook and post them elsewhere.
- ✓ Because employees are likely to take the handbook home and show it to friends and family members, be careful not to include confidential information or other details that you would not want outsiders to know.

### ***How do I get employees to read, understand, and follow the policies in the handbook?***

If you have created your company's first employee handbook, or if you have substantially revised an old one, you will want to take special care to properly present the new manual to employees. Initially, workers may feel overwhelmed when a volume of "rules" is handed to them. You can help to allay their concerns by taking a personal approach. Call a meeting for employees to introduce the handbook and allow individuals to ask questions about the policies. Explain that in general, the handbook does not constitute a change in policies, but merely serves to put into writing the policies, practices, and standards that the organization has always had. If the handbook includes any elements that do, in fact, comprise a change from past practices, consider including a summary sheet outlining any significant changes.

You need to notify employees that it is their duty to read and understand the policies contained in the handbook, and that they are responsible for requesting assistance if they do not understand a particular policy provision. Distribute along with the handbook a Receipt of Handbook Ac-

knowledge Form that each employee should sign and return to the HR department or other person in charge of employee records. (A sample form is provided in the Tools and Templates at the end of this book.) The form states that the employee has received and read the handbook and agrees to abide by all of the policies contained in this document and to seek clarification from supervisors when needed. The form should also restate any important legal disclaimers. Keep the Receipt of Handbook Acknowledgment Form in each worker's employment file. In the event there are any legal disputes surrounding the policies contained in the handbook, you will have proof that the handbook was distributed and that the employee acknowledged his or her understanding of employer standards and practices.

**WORTH REPEATING: "THESE POLICIES AREN'T BORING AT ALL!"**

During new employee orientation, a large equipment manufacturer would have its new employees participate in creative quizzes, role-plays, and games that centered on company policies and procedures. Because the process was fun for participants, they remembered much more of what they had learned than had they just been asked to sit and read the employee handbook.

*Once I have created and distributed the handbook, is there anything else I should do going forward?*

It is critical to review the handbook periodically to ensure that it accurately reflects changing policies and practices of the organization, as well as changes in federal, state, or local laws. Establish a review procedure at the time you develop your handbook. The procedure should include:

- ◆ A time frame for review (preferably annually)
- ◆ The designation of the individual(s) responsible for conducting the review
- ◆ A method for notifying employees of any changes to the handbook

Notify employees of any changes either by issuing a revised version of the handbook or a periodic "supplement" to the existing manual. Have

employees sign a new Receipt of Handbook Acknowledgment Form every time you issue a revised handbook or supplement.

**WORTH REPEATING: “READ IT FIRST ON THE INTRANET!”**

A technology company provided employees with immediate information about updated company policies by posting them on the company intranet, along with a prominent announcement that management had made a policy change. Make sure that policies and changes are posted in a format that cannot be altered by employees without specific access and authority.

*Since it is the digital age, how about an electronic handbook?*

Your company intranet is an excellent place to include an employee handbook and other relevant policies. If you want to dispense with a paper handbook altogether, you will need a system that records receipt and tracks employee acknowledgments. You may also use the company intranet to publish policies and procedures to guide managers. You can restrict access to managers by building appropriate access levels into the system.

Whatever format you choose, your handbook should reflect the quality of your organization. Handbooks need not be highly stylized, bound books, but they should not be faded, crooked photocopies. With the range of electronic and publishing resources available today, you can create a document that is professional and represents your own style.

# Performance Management

## How Do I Evaluate Performance and Conduct Meaningful Performance Reviews?

**A**sk employees about performance management and their experiences giving or receiving performance appraisals and you are likely to hear griping or humorous or scary anecdotes. Companies' approaches to performance management vary widely. There are organizations with elaborate performance management systems that combine frequent feedback with documentation, those that use simple forms for one annual discussion copied from other businesses or forms books, and others that use no system at all.

Meaningful ongoing performance management helps both individual employees and the business as a whole. Effective performance management is a key for the motivation, retention, and development of employees, because individuals learn how they are performing and where they are going in the organization. Managers learn more about their subordinates in the process, strengthen relationships through discussion, and develop their own coaching skills. The entire organization benefits from a system that aligns performance to companywide goals; provides a structured format for measuring results and giving feedback; and establishes a record for each em-

ployee that can be used to develop employees, inform future supervisors, and make sound employment decisions.

No matter what the size and culture of your organization, it pays to be attentive to performance management. Since there is no single correct approach for every business, you must take steps and adopt structures that fit with and work for your organization. Never just copy the approach of another company and assume that it will work for you. In this chapter, we will discuss some of the considerations involved in developing and implementing a performance management system that will get you the results you want.

## DEVELOPING A PERFORMANCE MANAGEMENT SYSTEM

### *What is “performance management”?*

Performance management is a systematic approach to tracking individual performance against the targeted objectives of the organization, and identifying strengths and opportunities for improvement. It involves more than giving an annual performance review. While a periodic formal review may be part of the performance management process, good performance management is an ongoing process, not a once-a-year event.

### *Where do I begin in creating a performance management process for my organization?*

*Set your expectations.* You cannot measure performance unless you first establish the expectations. For professional sports teams, the expectations are clear and measurable. The team wants to win. Individual players are expected to score points, complete specific plays, increase speed, or keep the opposing team from scoring. Performance is monitored daily and progress is easily determined. When performance declines or goals are set at higher levels, players are coached for improvement in form, plays, strength, speed, strategy, or resilience.

Monitoring performance is not as straightforward for most employers, but the same principles apply. You need to set goals for the company as a whole. Include specific objectives, such as revenue targets, excellence in customer service, or development of cutting-edge products. Once you have established your goals, you can set team and individual objectives to meet your goals.

Individual expectations for employees can be divided between specific

results and the attributes, attitudes, or behaviors that lead to these results. For example, you may expect your vice president of sales to achieve target annual revenues of \$1 million. To sell \$1 million worth of products, she must perform a series of activities and actions that perhaps include hiring and managing a sales force, planning and forecasting, and customer development, etc. For you to determine whether your vice president has been successful, you must continually evaluate whether her skills, attitudes, and behaviors are producing the results you want.

**WORTH REPEATING: “THANKS, NOW I KNOW WHAT I HAVE TO DO!”**

A start-up service industry employer gives its new employees a job expectation sheet that lists their major responsibilities, the name of their manager or supervisor, the other positions and departments with which they will interact, and their measures of success. Expectations are crystal clear from the outset.

*Fit the program to your company’s culture and philosophy.* If you are a technically savvy organization, look at the many Web-based systems available. If you have articulated precise goals to your employees, emphasize these goals in your program. If you are in the process of significant business growth and need information on which to base promotions, design a process that will elicit the information you require. A well-thought-out performance management system that meets your needs, fits your culture, and can be adapted when the business changes will improve morale and retention and become an integral part of your operation.

*Facilitate solid communication.* Performance management requires solid two-way communication about expectations and the individual’s progress against these expectations. The best managers meet informally, one-on-one with their direct reports on a regular basis to share updates on activities and projects, business direction and goals, philosophy, and feedback on results and expectations. The managers comment on performance status and suggest improvements; the subordinates tell the managers if there are any process problems or other obstacles to meeting the objectives.

***What is all this I hear about coaching?***

Coaching—or developing individual performance—is central to performance management discussions. Scheduled meetings can provide an oppor-

tunity for coaching, but the most successful managers coach their subordinates all the time. Successful employees seek out direction and coaching. Coaching can consist of a variety of activities, including:

- ◆ Giving and clarifying direction
- ◆ Jointly identifying and developing goals
- ◆ Giving and listening to feedback
- ◆ Acting as a source for guidance and advice
- ◆ Actively helping people do the work
- ◆ Suggesting improvements in concepts, process, or outcomes
- ◆ Building self-confidence by providing encouragement and reinforcement
- ◆ Maintaining morale through motivation
- ◆ Breaking down barriers and providing resources to achieve results and change
- ◆ Developing skills, knowledge, and abilities
- ◆ Giving guidance on advancement
- ◆ Providing guidance on interpersonal relationships as they affect the employee's work

### ***Do we need a formal mentor program?***

It depends on your organization. Mentoring on some level exists in all organizations. Strong managers will act as mentors to those that they supervise, and mentor situations will evolve naturally and informally outside of the reporting structure, whether as an outcome of the recruitment process, a special project, or a friendship. Mentors may coach, but in addition they provide practical advice on how to get things done within the organization, or how to navigate company politics and plan a career strategy. The most successful employees often credit a strong mentor with helping them to prosper and advance within the company.

One complaint about informal mentoring is that mentors tend to seek these special relationships with people just like them. If you find that only a narrow segment of your employees are benefiting from mentoring relationships, you may want to adopt a more formal mentor program. These can be simple approaches, such as pairing new employees with a more senior manager, or structured programs with significant training requirements for individuals who volunteer to be mentors.



### WORTH REPEATING: MENTOR UP

Intel Corp. and some other large companies have instituted reverse mentor programs that encourage learning relationships up the hierarchy. Senior managers can find out firsthand about new technologies, learn from the experiences of those at other levels of the organization, and gain the confidence of the next generation of managers.

### *How do I deal with unacceptable performance within my performance management structure?*

When faced with unacceptable performance, such as a project riddled with major errors or disruptive behavior at a staff meeting, give immediate feedback rather than waiting for a “better time” or, even worse, the annual review date. If you fail to address the issue, the employee will either not know of the problem or will think that she can get away with poor performance. And you, the manager, may continue to seethe inside. When addressing performance deficiencies, don’t bring employees into your office, tell them what they are doing wrong, and threaten them that they are never to do it again “or else.” Instead, plan for a two-way discussion where both sides understand the problem and agree on a solution. Recommended actions are to:

- ✓ Explain the nature of the deficiency and ask the employee why it occurred.
- ✓ Listen to the employee’s response.
- ✓ Ask the employee for ways to correct the problem or prevent a future recurrence.
- ✓ Agree on a plan of action, which may include identifying additional resources or obtaining more information.
- ✓ Express support and confidence in the employee’s ability to improve.
- ✓ Document the plan of action in a memo or e-mail to help track follow up. This documentation should not be a disciplinary action, but rather an agreement on expectations.

If performance does not improve, then begin a progressive disciplinary process. Progressive discipline does not mean that once an employee prob-

lem comes to light, discipline speeds up. The idea is to correct performance problems, not to “catch” employees and build up a record against them. The level of discipline should be appropriate for the type of infraction or performance problem and consistent with actions taken in similar situations. The procedure may vary for hourly and managerial employees. For hourly employees, disciplinary action will usually follow the progression of verbal warning; first written warning; final written warning or suspension without pay; and termination. Managerial discipline is usually handled by means of discussions, which are documented by memos or letters, and ultimately, if appropriate, termination.

Documentation of disciplinary steps is very important. In written warnings, state the reason for the action and the consequences for future infractions or continuation of the problem. Both the manager and the employee should sign the documents, with copies retained by the employee and placed in the personnel file. When developing a progressive disciplinary policy, give yourself the leeway to skip some or all of the disciplinary steps in appropriate situations.

There are some serious circumstances that require immediate termination without progressive discipline. They include theft, fraud, possession or use of illegal drugs in the workplace, and physical violence. New employees on probationary periods typically do not get the benefit of the progressive disciplinary process.

## THE PERFORMANCE APPRAISAL PROCESS

### *Does performance management have to include formal performance evaluations?*

The great majority of organizations use performance evaluations as part of their performance management process. Some companies limit their performance management activities to appraisals alone. Many of the same people who use performance evaluation as a tool dislike and criticize the entire process, citing reasons such as poor communications, lack of training, and the discomfort of a potentially negative conversation. Some critics fault the hierarchical approach of traditional top-down feedback, believing that it de-emphasizes entrepreneurial talent and individual input.

There are organizations that have successfully eliminated formal, structured evaluations while maintaining a performance management system. Some have replaced the once-a-year evaluation with informal and formal processes that revolve around providing better and more frequent feedback.

You are not required by law to conduct formal evaluations (with the

exception of limited government standards for certain licensing arrangements). In fact, a poor evaluation process and format may do more harm than good. If you have a system in place that is not helping you achieve the performance results that you want, take a break from the process, review it from start to finish, and introduce a new evaluation system if you feel it will help the company.

### ***What are my first steps in developing a performance appraisal system?***

First, identify what you are trying to measure. Typically, the evaluation process will:

- ◆ Identify gaps in performance or competencies and recommend strategies for closing the gaps.
- ◆ Capitalize on strengths.
- ◆ Use a combination of the above approaches.

You will also need to determine whether the review will be tied to compensation decisions and, if so, how.

Surveys and focus groups with managers and employees are excellent ways to gather information about the measurement approach and techniques that will work best in your organization. Ask questions designed to identify goals, previous positive and negative experiences with performance reviews, roadblocks to effective reviews, preferred rating scales, timing and levels of evaluation, best practices, and training needs. Soliciting input will also help you get early employee buy-in regarding a changed or a new process. Your program must have full support from top management for success. Management should participate in your development and training process.

### ***How often should performance reviews occur?***

Use an evaluation schedule that fits with the goals of your organization. Some employers have one set due date for all evaluations, with the discussions conducted up to eight weeks before the deadline. This universal date makes record keeping and tracking very easy and, if tied to compensation practices, can facilitate budgeting. It also provides a set time frame for managers to concentrate on the process and allows them to easily compare members of their teams. A single review date can, however, create a logistical nightmare for larger departments or managers with a large number of

direct reports. They may be forced to complete dozens of appraisals within a short time frame.

You may find that it's more realistic to set up more than one review date during the calendar year. Think about assigning different review dates for hourly and salaried employees, or dividing employees based on factors such as hire date, last promotion, or geographic location. Spreading the review dates can alleviate time pressures, but it will increase record keeping and tracking requirements. Some businesses perform evaluations on or about the worker's employment anniversary date. The anniversary date system allows managers to review performance over consistent one-year increments, but it can be time-consuming to track due dates and collect documentation.

Once you choose an appropriate review schedule, it is important to devise tracking procedures that will ensure that appraisals take place as planned. HRIS and payroll systems can track due dates automatically and generate reminders. Special software, with or without performance management tools, can help track the process. Strictly adhere to your stated timetables. Even an outstanding performance review can dampen the morale of an employee if it's conducted six months after the due date. If you fail to provide negative reviews in a timely manner, you may risk legal liability should you decide to terminate an employee and he argues that he was never notified of his shortcomings or given the chance to improve.

### ***What does a good review format look like?***

Keep it simple. A twenty-page performance review document will look daunting to most managers. Simpler reviews are more likely to result in greater consistency among ratings. You may decide to have more than one review format, such as separate appraisal documents for managerial and support staff or technical and nontechnical employees, but be sure that employees in similar job categories are measured similarly. Effective performance evaluation forms contain the following elements:

- ◆ *Clear standards by which the performance will be measured.* List the specific competencies or skills being measured, with examples of success. If you have job descriptions for your positions, the abilities listed in these documents can serve as good starting points. There are also many standards that apply to all positions, such as timeliness, accuracy, ability to prioritize, and positive attitude, among others.
- ◆ *An appropriate rating scale.* The purpose of the rating scale is to provide an objective way to determine whether an employee is meeting perform-

ance standards. Some organizations use a numerical system (e.g., a 1–5 scale); others prefer descriptions such as Excellent, Good, Fair, and Unacceptable. Most businesses provide between two and five tiers of achievement within the rating scale. Having more tiers can allow you to draw finer distinctions among candidates, but it can also lead to inconsistencies when people have varying understandings about the difference between a rating of 3 versus a 4. Whichever measurement you choose, clearly specify which ratings constitute acceptable performance and which fall below company standards. If you distribute a form to your customers asking them to rate their satisfaction with the company, using the same rating scale for your internal performance reviews will promote consistency in language and expectations when you talk about performance.

- ◆ *Space for written comments by the supervisor.* Encourage specific comments, and require them in situations involving superior or very poor ratings. You do not want managers to mechanically check boxes without thinking through their responses. Explain on the form that the reviewer should carefully select examples that concentrate on performance, not personalities or trivialities, with an eye toward helping the employee understand the assessment.
- ◆ *A section for an employee self-appraisal.* Employees should be able to assess their own performance. A designated space can be provided on the evaluation form or, prior to the review meeting, employees can be asked to complete the same form their supervisors complete. Self-appraisals (see Tools and Templates) increase employee buy-in to the process, assist supervisors in their focus, and identify any blind spots workers may have about their performance.
- ◆ *Suggestions and specifics for employee development.* This may include in-house or external educational or training programs or on-the-job experiences recommended for the worker's further professional growth.
- ◆ *Objectives set by the employee and manager at the last appraisal and rating of their results.* Comparing last year's goals with actual performance provides continuity of standards from evaluation period to evaluation period.
- ◆ *Objectives to be met by next appraisal date.* These can include new goals, as well as prior objectives that were not completely met.
- ◆ *Approval by all of the levels necessary for the company's process.* Approval requirements will vary, but all appraisals should be reviewed by at least one person in the organization who is familiar with the goals of the appraisal process. When supervisors submit reviews that do not meet the organization's performance management objectives, they should be coached on the proper way to complete the appraisal and required to redo the document.

### *Where do I get my form?*

While another organization's appraisal form will rarely be entirely adequate for your needs, you may be able to customize documents from other companies, or you can pick and choose elements from several different forms. Alternatively, you may want to work with a consultant to develop an original form or purchase an off-the-shelf software program with built-in performance evaluation templates or wizards. If you choose an off-the-shelf product, look for one that you can tailor, and evaluate the training materials, rating guides, or other support materials available.

#### **BETTER FORGOTTEN: RIGHT LOGO, WRONG INFORMATION . . .**

An HR director responsible for the opening of a new location of a national company took with her a copy of the company's performance evaluation form. She carefully changed the logo on top to reflect the new location, but she did not look at the body of the form. As a result, the form contained confusing references to functions and priorities not relevant to the new location.

There is no need to rush to select a product or grab someone else's forms. A quickly developed program that doesn't reflect your organization or meet your needs will cost more money in the end and cast doubt on the integrity of the entire review process. Before purchasing an expensive product, test the system with a small group that includes members of senior management. Even if you then decide it is a perfect product, make sure that it allows you to make changes, or that you have not spent so much money on this one product that you can't make any other changes in your process for at least five years! Performance review should be a dynamic process that grows and changes with the company.

### *I have the forms . . . now I just send them out and wait for the reviews to come in, right?*

Wrong. The biggest mistake employers make in performance evaluations is setting calendars, sending out forms, and then sitting back and expecting them to be completed effectively. You cannot assume that all managers will read the instructions on the form and proceed to write insightful appraisals. Whether you are implementing a new system or maintaining an existing

process, training is critical to give managers the knowledge and motivation to provide meaningful feedback. Whether you conduct the training in-house or through outside providers or educational institutions, it should include information about:

- ◆ Why the organization values performance appraisals and how individual performance benefits the organization
- ◆ The structure of the process and its relationship with compensation
- ◆ The meaning and application of the rating criteria
- ◆ How to develop goals that are specific and measurable
- ◆ How to give feedback, both positive and negative
- ◆ How to coach an employee

Training should also provide managers with the chance to practice their written and verbal appraisal skills before their first review discussion. Managers have the most difficulty giving constructive feedback that focuses on objective measurements, using specific examples. Instead of telling an employee he has a “bad attitude,” the reviewer using effective feedback techniques might say, “I have noticed that you often fail to cooperate with your coworkers. You did not show the teamwork we expect of our employees when you started an argument with Mary just because she asked to borrow your scissors.”

### **BETTER FORGOTTEN: “NOBODY’S PERFECT!”**

We have all worked for, or heard of, managers who state that they never give the highest ratings available on evaluations because “no one is perfect.” Why have the highest levels on the form, then? Train managers about the meanings of the various ratings and the standards of performance that qualify an employee for a particular ranking.

Every manager’s own appraisal should include a section rating his timely and comprehensive completion of subordinates’ evaluations. Managers will come to understand that providing accurate, prompt, and constructive feedback is an organizational priority and an important criterion of acceptable performance as a manager.

## Alternative Appraisal Methods

There are numerous other evaluation methods that come in and out of vogue that you may wish to consider. Usually, these approaches will supplement, and not substitute for, the traditional one-on-one performance review.

### *Will 360-degree feedback make me dizzy?*

The concept of 360-degree assessments, feedback, or evaluations is based on the assumption that an organization can cull more information from a variety of sources than from managers alone. This process replaces the traditional top-down rating with anonymous performance feedback from peers, subordinates, managers, and in some cases, even customers and suppliers.

Before even investigating 360-degree assessments, identify your goals and the results you expect. Will you use the information for development purposes only, or will it become a factor in pay and promotion decisions? What will be your timeline and training needs, and how will you communicate the results to participants? A 360-degree assessment can be administered using paper and pencil, on the Web, or even by telephone. The method you choose will depend on your goals and your participants. When selecting appraisal forms for 360-degree reviews, you'll want to look for flexibility, costs, and support services that meet your needs.

The evaluations will generally contain four or five rating scales with space for comments, with between eight and fifteen respondents assessing each employee. It is important to use at least six evaluators to preserve anonymity, to train participants on the system, and to communicate the timetable.

If used properly and under the right circumstances, 360-degree feedback provides honest information and different perspectives, and during growth and change periods it can be a perfect tool to gain a picture of the entire organization. It can be especially useful in work situations that involve many cross-functional teams or relationships. However, this appraisal method will not work for every organization. It may not work in companies with a distinct hierarchy of management and reporting structure, or where there is a low level of trust among employees. Furthermore, it may not be effective over the long term. Studies have indicated that when you solicit ratings from the same group over a long period, the evaluators tend to be less honest and more flattering. In addition, implementation of the process can be daunting due to the number of people involved. Do not cut corners to minimize costs.



### ***Who's keeping score on a balanced scorecard?***

The balanced scorecard is a method of evaluation that uses four specific, balanced perspectives to measure performance: financial, customer, internal business processes, and learning and growth. On each scorecard are goals and ratings at each level of achievement. While the balanced scorecard approach can be adapted to rate individuals, it is really a tool for understanding overall organizational performance. Balanced scorecards can take different forms based on the results that you want to measure, but the system is best used in an organization where there is a highly developed existing structure or means for process improvement.

### ***Should I rank my employees through a forced ranking system?***

Forced ranking systems place employees along a curve of performance or place them in categories of percentiles for performance. The best performers would, for example, be placed in the top 20 percent, with a large group in the middle at 70 percent and the worst performers dwelling in the bottom 10 percent. The ranking is “forced” because there is a requirement that 10 percent of employees be given the lowest rating regardless of whether their reviewers would have rated the workers that way on their own.

Forced ranking is rarely the sole component of performance management, but rather a result of some form of review. The system has been used to provide greater rewards for top performers and specific deadlines for performance improvement for the lowest-ranking employees. Some employers have used a “rank and yank” philosophy under which the bottom 10 percent of employees are automatically terminated each year, allowing the organization to consistently purge the lowest performers. Although this process can aid an organization by reinforcing goals and objectives and rewarding the best employees, it can be demotivating for the rest of the workforce and promote competition and individual performance over teamwork. In some major companies, forced ranking has resulted in well-publicized discrimination, disparate impact, and class-action lawsuits.

## **Probationary Periods**

### ***How do I evaluate new employees?***

Some new employees seem to fit seamlessly into their new jobs and surroundings and others take more time to get acclimated, but you have probably also faced the situation where a recent hire is performing far below

expectations and shows a lack of desire or ability to improve to an acceptable standard. You will want to have flexibility built into your policies so that you can terminate these clearly unsatisfactory relationships before they adversely affect other employees or your bottom line. A well-defined probationary, introductory, or “tryout” period will enable both you and the employee to determine if the job is a good fit.

Generally, a probationary period will range anywhere from sixty days to six months. Inform new employees of the terms and duration of the probationary period, whether in a written offer letter or the employee handbook. Your explanation should state that either you or the employee can terminate the employment relationship at any point during this time, with or without cause or notice.

When you have a new employee who is not performing, first ask yourself whether you have established and clearly communicated your expectations. If your new IT technician is completing a substandard six repairs a day, did you inform her that the expectation is ten repairs a day? Also look at whether there is another significant problem with a working relationship or with communications, and whether the employee does in fact have the necessary skills and knowledge to complete the job. Let her know that her performance is unacceptable, then set a brief period of time within the probationary period for her to demonstrate change. Workers who begin the employment relationship violating basic rules of conduct such as attendance or punctuality are unlikely to be good employees. New hires should be expected to demonstrate their best behavior, and those who come in with bad attitudes or behavior problems should be terminated.

**WORTH REPEATING: “THANKS FOR THE FORM!”**

A service employer gave all new hires a blank copy of the new employee evaluation form during the orientation program, explaining when and how it would be used. This took some of the mystery and potential for fear out of the process.

The completion of the probationary period is a good time for a first performance evaluation. You can use a basic checklist that summarizes what the employee has accomplished or learned, reinforces expectations, and measures adherence to generally expected outcomes, such as good attendance and ability to work with other departments. The same evaluation form can be used prior to the end of the probationary period to provide

the framework for a discussion when the employee is not performing at expected levels.

Do not make the mistake of extending a probationary period to give an employee another chance. The purpose of a probationary period is to set a time frame for early review to predict success. In addition, extending probationary periods for one employee but not for others can raise concerns about inconsistent treatment. Complete the introductory evaluation as soon as possible after the end of the probationary period. If you wait too long, the employee will likely believe either that everything is great or that you just do not care. Don't limit introductory reviews to lower-level employees. Even the most senior executive will benefit from early, structured feedback. If you find that the term "probationary" creates a negative impression, simply call the first discussion a ninety- or 120-day review.

## CONDUCTING THE PERFORMANCE APPRAISAL

### *Who should conduct the appraisal?*

Generally, the employee's immediate supervisor should conduct the performance appraisal. If the supervisor does not have the experience to conduct a proper review, the next level manager can communicate the evaluation. While more than one manager may have input into the content of the review, select only one person to actually participate in the appraisal meeting. A lone employee sitting in a roomful of managers is likely to be put on the defensive.

### *How should I plan for the in-person appraisal discussion?*

The best performance evaluations are conducted when both the employee and the manager are well prepared. Use a structured approach for planning and conducting the review.

- ✓ Set the date, time, and location of the review and communicate this information to the employee.
- ✓ Request a self-appraisal and designate a due date.
- ✓ Review previous performance appraisal documents for this employee, especially the most recent. If another manager prepared the last review, you may want to contact this person if you have questions.
- ✓ Review any other goals or incentives, both individual and team-based.
- ✓ Review the individual's personnel file or your own notes and records concerning any recognition received or conversations about performance.

- ✓ Complete a draft of an evaluation form once you have received and read the self-appraisal.
- ✓ Submit the review to any parties that need to authorize the document or any related salary actions.

### ***How do I conduct the review?***

Choose a quiet place, free of interruption. If you select an off-site location such as a restaurant or coffee shop, choose one where you and the employee will be comfortable. Do not start the meeting by reading the form out loud and reviewing it line by line. The best reviews focus on discussion of performance, not completing a form, and you want to set the scene for a conversation. Begin by welcoming employees and asking them about their overall experience at work since the last appraisal. You can also gain insight by soliciting their perceptions about the department. Then proceed to the body of the review. Summarize results from the previous appraisals, including specific goals and development activities; cover the ratings of the specific competencies or job requirements, skills, or knowledge; and set out the new goals and development plan. Sometimes the insights you gain from the conversation may lead you to change some of your prepared ratings.

The evaluation should be an interactive process, giving the employee the chance to participate, ask questions, respond to feedback, and offer suggestions. The worker may not always agree with all comments in the review, but should be allowed to express concerns and request clarification—although you should not let the meeting disintegrate into a complaint session. You may wish to split the review into more than one session, with the latter meetings focusing on goals and development plans that require further thought. Once the review document is completed, whether during or after the review meeting, the employee should sign it and retain a copy.

### ***Can I use the evaluation to tell the employee to shape up or ship out?***

The performance review is not the place to have your first discussion about an individual's unsatisfactory performance. A review—positive or negative—should never come as a surprise, but should be a reinforcement of your continuing communications with the employee in accordance with your total performance management process. If you have had previous discussions about performance problems, you may appropriately use the re-

**BETTER FORGOTTEN: “DON’T PUT ANYTHING NEGATIVE IN WRITING!”**

A mid-level manager worked in the field for a company where the managers conducting reviews wrote summaries to ensure that nothing negative ever went in the form sent to the corporate office. They said that only positive items belonged on the permanent record. As a result, employees did not get helpful developmental suggestions in writing.

view to put the employee on a performance improvement plan (PIP), outlining the performance standards that the employee must meet as a condition for continued employment. When structuring a PIP, be sure that it includes:

- ◆ Specific, measurable improvements that the employee must demonstrate. Instead of using vague language such as “We expect better attendance,” you might say, “We expect no unauthorized absences within the next ninety days.”
- ◆ A defined, reasonable time frame during which improvement must occur (generally sixty to ninety days, but no more than six months).
- ◆ A written statement that if the employee does not make the improvements within a designated time, disciplinary action will be taken, up to and including termination.

If a performance evaluation discussion gets nasty or the employee is too defensive or argumentative to hear you and respond clearly, do not hesitate to reschedule and get advice on how to continue.

***What do I do with the final written evaluation?***

Once the evaluation is completed and signed by all necessary parties, place the document in the employee’s regular employment file. Retain all previous evaluations in the file as well, so that you have a history of the individual’s performance and growth.

***Are there any other rules about maintaining the employment files?***

Because an employee’s file is generally available for inspection by the employee and his superiors in the organization, it is important to limit docu-

mentation in this file to materials that *relate to the individual's employment*. It is proper to put the following documents in the employment file:

- ◆ Job application
- ◆ Resume
- ◆ Employment contract (if applicable)
- ◆ Performance evaluations
- ◆ Disciplinary reports
- ◆ Company awards
- ◆ Training record
- ◆ Compensation history

Keep information that is sensitive in nature and not directly related to the employee's qualifications, compensation, or performance in separate files, in order to protect the employee's privacy rights and avoid allegations that the information was used improperly. Strictly limit access to this information to those with a need to know. The types of information in question include:

- ◆ *I-9 Documentation*. While the law does not require that these forms be kept apart from the basic employment file, the Bureau of Citizenship and Immigration Services recommends keeping them separately. (See Chapter 8 on regulatory issues for more information about maintenance of I-9 records.)
- ◆ *EEOC Records*. Because these records cannot be used for determining employment status, they should be stored separately (see Chapter 8).
- ◆ *Grievances, Discrimination Complaints, and Responses*. Since these documents do not relate directly to the individual's employment status, store them separately from general employment files in an "employee confidential" file. This will help to avoid potential retaliation claims.
- ◆ *Employee Assistance*. Documentation concerning whether an employee has sought help through the employer's employee assistance program is confidential and should be kept in a confidential file.
- ◆ *Medical Records*. The Americans with Disabilities Act (ADA) requires that medical information be kept apart from personnel records. Therefore, benefits enrollment information, documentation on preemployment physical exams, workers compensation, disabilities, Family and Medical Leave Act (FMLA) requests, reasonable accommodations, insurance claim spe-

cifics, and physicians' notes should be kept in confidential medical files, protected from access by other employees. You may inform managers and supervisors about necessary work restrictions or accommodations, but only to the extent necessary to enable them to implement appropriate actions.

Finally, never collect or retain information that is not directly related to an individual's employment. Examples of such inappropriate material include documentation related to an employee's personal life, religious or political beliefs, social club memberships, or sexual orientation.

# Training and Development

## How Do Successful Companies Improve and Enhance Workforce Skills?

**A**ccording to the American Society for Training and Development, U.S. organizations spend more than \$50 billion annually on employee training. Yet, while some organizations place a premium on training and developing their workforces, others avoid it altogether. When *Fortune* magazine collected training data for its 2003 “100 Best Companies to Work For,” it reported that annual training hours per employee by these select employers ranged from 162 down to five. Why such a great disparity? An organization’s view and use of training depends on a number of factors, including budgetary considerations, prior negative and positive experiences with training programs, and general style and philosophy.

In difficult economic times, organizations often instinctively eliminate their entire training budgets, but it is shortsighted to cut all employee development. Tough periods are usually good times to learn skills needed to remain competitive, and you do not want to risk ending up with skills gaps when business improves. In other corporate cultures, managers believe that training is a *must*, but they do not take the time to clearly think through



the results that they want to achieve and whether the contemplated programs are in fact likely to lead to the desired results. Sound training brings valuable benefits to employers and employees alike, including new and enhanced skills, increased productivity, and improved employee morale. Poor quality training—or a focus on the wrong development areas—can be a total waste of time and money that leaves the company in no better position than if there had been no training at all.

Before spending a dime on any training program, your organization will need to make some reasoned decisions about whether training is in fact necessary under the circumstances, and if so, what types of development efforts will best suit your budget and needs.

## ORIENTING THE NEW EMPLOYEE

Some employers spend much time and effort wooing job candidates, but when the individuals report for the first day of work they find themselves to be forgotten souls. There may be no one designated to make the employees feel welcome. They may be placed at desks with no instructions on how to use the computer in front of them, or told to follow a peer who has no conception how to orient the newcomer. It is embarrassing and frustrating for people to attempt to make a call on an unfamiliar phone system when they were never told they had to dial an access number first.

### **BETTER FORGOTTEN: “HOW DO I ANSWER THE PHONE?”**

A consumer products company welcomed new employees to their desks and phone systems by giving them a copy of the product manual that came with the equipment. There was a great deal of reading to be done before even a senior manager knew which button to press to answer or make a call!

All organizations should have an orientation process in place—whether structured or unstructured—to provide essential knowledge and information about working at the company and to increase the comfort level of nervous new hires. New employees want to learn more about the business and philosophy of the company, as well as how to get things done within an unfamiliar system. A standard orientation checklist will ensure consistency in the introductory process.

### ***What training should take place on the employee's first day of work?***

On the first day of work, designate someone to greet the new employee and cover those items that are essential to the transition to the organization. Essential items include:

- ◆ A tour of the work area, introduction to coworkers, and information about keys, ID cards, rest rooms, break areas, and entrances and exits
- ◆ Review and discussion of job description, job expectations, and short-term goals
- ◆ Details about the work area, including how to use the telephone, computer, e-mail system, and company intranet, with appropriate access instructions
- ◆ Completion of necessary payroll forms and communication of pay cycles
- ◆ Explanation of any jargon or terms specific to the industry or company
- ◆ Lunch or breaks with coworkers or managers to answer questions and begin relationships with others in the company

Meeting many new people at once can be overwhelming for new hires. Present them with schedules that include the names and contact information of all the people they are scheduled to spend time with on the first day. If you assign a peer or “buddy” to work hand-in-hand with the new hire during the first day or so, choose a good communicator who understands the information that needs to be delivered, enjoys sharing knowledge with others, and can document the information imparted. You may be tempted to select your best employee for this task, but this person will not always be your best trainer.

At the end of the first day it is important that someone, preferably the manager, spend some time with the individual and review the day's experiences. This conversation will highlight any gaps that need to be addressed and contribute to a climate of good communication. First days are tough; providing closure and consideration will make your employees feel valued.

### ***Do we need a structured orientation?***

You may think that your organization is too small, or that you don't hire enough people at the same time, to have a structured orientation. How-

ever, an effective orientation can be so beneficial to your company that you should not use company size as an excuse to omit this training. A structured orientation will enable you to provide information and answer questions that could avoid future confusion about company policies, goals, operating procedures, and employee benefits. New employees will have the opportunity to meet and form relationships with new hires in different work areas or functions. Employees who participate in well-designed orientations learn that their company is willing to invest in them and receive a consistent message about the company culture.

### **WORTH REPEATING: KEEP TRAINING UP-TO-DATE**

**A multilocation service company reviews its orientation training on a quarterly basis to include the most current information about the business and to update exercises to keep them fresh for new audiences.**

Orientations can take many forms. They can be formal or informal in tone, conducted in a classroom format or in an office with only one or two people. You do not have to hold the meeting on an employee's first day of work. You may want to wait until you have a larger group to train or to avoid causing first day "information overload." In any event, you should invite employees to an orientation meeting within a reasonable period of time—no more than a month or two—after they join the company. Waiting at least a few days or weeks allows workers to learn more about the organization and ask more insightful questions than "Where's the ladies' room?" Sound orientation programs have several common key elements:

- ◆ An explanation and discussion of company goals, mission, and/or vision, including marketing efforts and samples of advertising, if appropriate.
- ◆ Introductions of key employees and top executives. Company executives may make presentations to the group or mingle informally over coffee or lunch.
- ◆ A review of the company history, structure, and/or organization chart to identify where each attendee's department "fits in."
- ◆ Distribution of the employee handbook, with a review of key policies.

- ◆ An introduction to and overview of any benefits plans.
- ◆ A tour of the facility, perhaps with product demonstrations, a view of manufacturing processes, or other organizational highlights.
- ◆ Emergency, safety, and security procedures.
- ◆ A discussion of any outstanding logistical details, such as pay cycles and deadlines for benefits enrollment.

You may also find it appropriate to include training on service to external customers and fellow employees, government regulations, or any other topic that is relevant to your industry or company.

## CONTINUING EMPLOYEE DEVELOPMENT

All employees receive a healthy amount of on-the-job training in one form or another. Some people are good at finding their own paths and procuring the necessary resources and information. All you need do for them is provide the tools and encouragement to be successful. Others learn best by shadowing other employees, observing, and asking questions. In these situations, you should do your best to make sure they are following people who will set good examples and impart clear and accurate information. Mentor relationships can also provide valuable training and support (see Chapter 3 on performance management). On the-job training is necessary and beneficial, but it will not adequately address every development need.

### Training Options

#### *What types of training are out there?*

There are two basic categories of training: hard and soft skills. Hard skills are the measurable, often technical knowledge or physical task requirements of a job. Abilities such as computer programming, typing, and machine repair are hard skills. It is easy to identify the need for hard skills training, and the results of the training are clearly measurable. Soft skills relate to personal, individual development and are more difficult to define and measure, but they are very important for successful job performance. Leadership, time management, and creative thinking are soft skills. Some types of training have both hard and soft skill components. Sales training, for example, may encompass hard skills such as product knowledge and price negotiation, and soft skills such as empathy and listening.

### *How do I know what kind of training to offer?*

A training needs analysis is the first step in identifying the types of programs that will further your goals, which will help you decide whether training is appropriate at all. Frequently, organizations implement training because a manager identifies an individual or organizational need and requests a program. However, not all needs are training needs. Your vice president of marketing may observe that employees in her group are not communicating effectively in developing suitable marketing strategies for your products. If you respond by immediately hiring a consultant to present a communications program, you may fail to identify the real problem—that your vice president is not giving employees the information they need to get the job done! Training without a needs analysis is simply responding to symptoms and not attacking the root cause of the problem. A good needs assessment will generate or strengthen commitment by providing facts to back up programs.

You can conduct the assessment internally or hire an outside expert. Evaluate the proposed training in the context of the organizational structure, values, and culture as a whole. To get the most from your assessment, gather information from both target participants and managers through interviews, focus groups, or anonymous questionnaires. Depending on the type of training you are contemplating, it may be helpful to contact outside parties, such as customers or vendors, for input. When conducting your needs analysis for any proposed training, you should seek the answers to the following questions and carefully analyze the information you gather:

- ◆ What is the business necessity for the proposed training? Specifically identify the goals and how the offering will help to achieve the goals. Describe objective measurements that will indicate whether the training has been successful.
- ◆ Has the company conducted training in this area in the past? If so, what were the results and why?
- ◆ Is the current organizational deficiency that the training seeks to address really due to lack of skills and knowledge or some deeper problem? Training is not a quick fix for problems caused by management apathy, bad morale, or an unqualified workforce. With hard skills programs, the answer is usually straightforward. You have a new computer system and therefore must train employees on how to use it. Or your company has experienced a rash of harassment complaints and you need to educate your workers about the federal laws and your company antiharassment policy. You will more likely be required to look beneath the surface to find the root cause

when considering soft skills training. Do employees lack creativity because they do not understand how to think creatively, or because there is a stifling, punitive management style at the company? Training may help with the former situation, but never the latter cause.

- ◆ In what ways do prospective participants prefer to learn? In a classroom format or through self-study? Informational lectures or participatory role-playing?
- ◆ What is the budget for the program?
- ◆ Will the benefits to be achieved from the training justify the costs of training, both in time and money?
- ◆ Is there management commitment to making the proposed change? Without management reinforcement of the skills learned in the training, results will be fleeting.

***My needs assessment indicated that training is appropriate. How do I identify the right resources?***

This depends on the type of training you are looking to develop, your specific goals, and your budget.

## **Training Classes**

*Product Training.* When training for skills specific to a product, such as a piece of equipment or computer software, first see if the manufacturer or vendor offers free training with your purchase. Even if they offer free training, do not just assume that it will fit your needs. Be explicit about your goals and ask the company if the training will be suitable to address them. Request samples of the training materials and meet or speak with the trainer. If the free training will not meet your goals entirely, but will still provide a worthwhile benefit, you may decide to invest this time to add knowledge and help you to evaluate progress and identify the next step.

If the manufacturer or vendor charges for training, sells training products, or endorses a training company, it pays to weigh this option against other available alternatives. You can also purchase off-the-shelf training programs to use in-house. Before buying any training products or materials to use internally, identify whether any of your employees have the skills, the product knowledge, and the time required to administer the training. Review a sample of the materials to see whether they reflect your objectives, exemplify the quality of other written materials that you use, and can be customized for your use where necessary. Obtain references from other organizations that have purchased the product.

Off-the-shelf solutions sometimes involve additional costs, such as charges for video rentals and duplication of handouts. If you don't have adequate space at your facility to conduct the training, you will also have to factor in the costs of an outside meeting space.

### **BETTER FORGOTTEN: "WHERE ARE THOSE NEW COMPUTERS?"**

A consumer products manufacturer took the time to send a large group of employees to outside training on a new computer system. When they returned to work, the new equipment had not been installed. It did not arrive until three months after the training. By the time the computers came, the employees had forgotten most of what they learned.

*In-House Training Programs.* The effectiveness of these programs will depend on your internal training capabilities. You may have good trainers among your managers, even if they have not conducted programs in the past. However, just as with one-on-one training, your best managers may not be your best trainers. You will want people who are comfortable presenting in front of an audience and can deliver information clearly and enthusiastically.

To tap available talent, ask prospective trainers if they want to take on the assignment. They should be able to develop an outline for the program and identify the steps that they will follow and an evaluation method to be used to identify measurable results. Books and trainers' materials are readily available to guide them through the process, and there are excellent "train the trainer" programs offered through local colleges and training companies. These courses are well worth the money, because they will enhance both the employee's personal development and your own internal training function.

You can also exploit internal talent as subject matter experts for training outside of a classroom setting. Keep a list of capable trainers available to call on in problem situations, or form a company advisory group. To qualify as subject matter experts, these trainers should meet a set of minimum criteria, such as years of experience, level of knowledge, or number of problems fixed. They should be able to connect with others and communicate basic knowledge in a way that nontechnical employees can understand.

*Outside Trainers/In-House Programs.* If you lack the skills, knowledge, or resources to conduct your training internally, you may consider hiring an

outside trainer or facilitator to conduct a program for your employees. The quality and styles of trainers vary considerably. Speak with several trainers to find the one who will work best with your organization. You can identify potential trainers through employers associations, chambers of commerce, other businesses that use the same product, local colleges, trade magazines, and business publishers. Look also for articles on the subjects written by experts who may conduct training programs or know others who do. The American Society for Training and Development publishes lists of its members nationally and through local chapters. When selecting a trainer, ask about the types of materials and learning activities used and, if possible, observe the trainer in action at a local program.

Trainers charge by the program, day, or hour. These rates may or may not include additional costs such as materials, planning, design, and travel expenses. It is perfectly acceptable to have a budget for the activity, but never select a trainer based on cost alone. Even the lowest-cost provider will end up being very expensive if employees do not benefit. If the cost of the trainer you select exceeds your budget, ask this person to recommend a student or protégé. You can also reduce your costs by identifying other employers with similar needs and scheduling back-to-back dates for out-of-town trainers.

If you are planning a training initiative that will involve the entire organization, begin with a pilot program to help evaluate effectiveness early in the process and make any changes to improve both the delivery and results.

### **WORTH REPEATING: “THAT CASE STUDY WAS GREAT!”**

A small specialty computer manufacturer gave the trainer it had hired for basic management skills specific examples and case studies from the company. This made the information and terms used truly relevant to participants.

*External Training Classes.* External training classes can provide quality learning experiences at a variety of price points. Software classes and training in other commonly requested skills are available through adult education courses at local high schools, community colleges, libraries, and national computer retail chains. These inexpensive options can fit easily into your schedule. National retail chain stores that offer training are conveniently located and will offer discount packages for multiple attendees. Large train-



ing companies also offer public programs, frequently at higher cost. If you cannot preview samples of materials, ask for an outline to make certain that the topics that you are interested in are covered. Ask also for references for the specific trainer who will be conducting the sessions. The facilitator will be a key factor in the success of the program.

***Given the choice, is it better to use an internal or external trainer?***

Again, it depends on the situation. Employees may regard an external trainer as an expert and an investment made by the company. On the other hand, if this trainer is not successful or follows facilitators who have conducted poor programs, employees may view your efforts suspiciously, which may color the results of the session. An internal trainer may connect more quickly with the audience and provide examples more closely geared to the industry or the company. When you send workers to training outside the company, some workers will consider the opportunity as a reward, while others will resent having to leave the workplace. The range of potential reactions reinforces the importance of properly evaluating any training before committing to a program, no matter how and where it is conducted.

## **E-Learning**

***Do we need a classroom? Can't we do it all on the Web?***

E-learning organizations claim their products are faster, cheaper, and more productive than traditional training methods. Web-based tools are effective for some types of learning, but the Internet is far from becoming the medium of choice. Online courses are best for teaching basic concepts and technical skills. Training can be conducted conveniently at the employee's desk or company computer room, and the self-paced capability of e-learning is perfectly suited for technical subjects like Microsoft Office. When evaluating whether e-learning is right for you, consider the characteristics of the audience and how you will provide access to computers, as well as the location and training schedules. This process involves a learning curve for the new participant, who may be more accustomed to classroom training with face-to-face instructor interaction. Some adults are out of practice or uncomfortable with self-directed or solitary learning.

There are an overwhelming number of publishers of Web-based training. Before you seek vendors, identify your selection criteria, both logistical and audience requirements. Create a list of potential vendors and narrow it down as much as possible by using your criteria. With your short list, you can request courses to test. Automatically reject any vendor that does not

have a product you can test; a responsible e-learning company will be more than willing to let you see whether its product is appropriate for you. Technical employees should test programs on highly technical topics. Inquire about pricing for bundles, assessment and tracking, testing, and performance management features. Value-added features that provide you with user-friendly administrative, reporting, and follow-up tools are well worth the price.

Once you select an e-learning platform, communicate and market it to users by explaining how, when, and where they can access their training. Also, make clear any additional requirements for use. If your participants are uncomfortable with technology or online learning, offer a live demonstration. You must inform your employees if you plan to monitor results.

Many organizations have had success with a blended approach, combining e-learning technology with classroom programs. This method can be particularly beneficial for conducting assessments, identifying skills gaps, and providing basic knowledge before a program. Online components can be integrated into a classroom program for testing, review, and follow-up assignments. Properly deployed, e-learning can be a useful tool for organizations of all sizes, providing employees the opportunity to learn at their own pace with training tailored to their needs.

## Government Resources for Training

### *How do I provide quality training on a shoestring budget?*

It is possible to find excellent internal programs that do not have the numerous bells and whistles associated with more expensive training programs. Skilled trainers and funding are also available through federal, state, and local government-sponsored sources. Local workforce investment boards can allocate funds to provide skills training for new employees and to upgrade the skills of existing employees when the training will aid in job retention or job growth. Your local Department of Labor or One-Stop employment office can provide more information on available programs.

Four-year and community colleges can help you access funding and trainers to upgrade skills, retain jobs, and train hard-to-employ or dislocated workers. Getting a program funded and started may take some time, since the college will apply to your state education or labor department for the funding. Colleges may also design and deliver training for you to further their own research.

## Delivery of Training

### *What is an effective training method?*

Any method is effective as long as it delivers the message and improves the requisite employee skills. Effective facilitators use a variety of approaches, tailored to the audience, topic, and desired results. Adult learning techniques are different from those employed in the classroom for high school and college students. Adults need to be actively engaged in the learning process and have the opportunity to test and apply what they learned. Effective devices for adult learning include:

- ◆ “Lecturettes” that explain concepts and facts. These should be brief and integrated with other activities.
- ◆ Demonstrations of skills, where the facilitator shows participants how to do something themselves or uses a video model.
- ◆ Group discussions of concepts, for sharing ideas and experiences.
- ◆ Workbooks, handouts, and audiovisual presentations that are appropriate to the level of the participants.
- ◆ Role-plays that allow participants to practice skills by acting them out.
- ◆ Relevant case studies that involve participants in using skills and knowledge to solve problems or review issues.
- ◆ Self-assessments that give participants the opportunity to interpret their actions or behaviors using a published scale or comparison.
- ◆ Videotaping participants, with subsequent review and facilitator feedback. This is helpful in teaching skills such as presentation or interviewing.
- ◆ Online resources, which may augment programs or are used as the primary teaching medium for a topic.

### *What is this I hear about training games and wilderness retreats?*

Many organizations spend large sums of money to develop soft skills such as leadership or teamwork. These programs often take a group far away from a workplace for a day or a week, or have them engage in activities that seemingly have nothing to do with work. Trainers conduct sports challenges, combat simulations, races, outdoor adventures, or even group meal preparation, all designed to promote bonding, identify leaders, and

**BETTER FORGOTTEN: “WHAT LANGUAGE WAS THAT VIDEO IN?”**

A safety manager in a large manufacturing plant was required to provide extensive justification to purchase an expensive training video. She carefully prepared for the first showing—a preview of the training for senior plant managers. When she turned on the video, to her embarrassment she discovered that the video wasn’t in English! Check all materials first to make certain they are the ones you ordered and the ones you need.

develop planning skills. Proponents of these methods claim that employees return from these activities energized, with a better understanding of their team and direction. Critics view this training as removed from the workplace and reality, stating that once employees return to their daily activities all of the warm feelings dissipate.

As an alternative to sending your “troops” to the jungle for a week, you can incorporate similar simulation activities into classroom training. You have probably heard of paper-and-pen survival games, seen model buildings made out of materials on hand, or passed oranges around under your chin, from person to person. Use these methods thoughtfully. Done properly, fun and games can enhance a training result. If they are not carefully planned or do not have a stated goal, or if results are not debriefed or the participants are unwilling to engage in the activity, the entire program could fail.

Soft skills training programs will evoke some of the strongest reactions from participants, both positive and negative. Too often, a CEO or senior manager will see a speaker in action or read a trendy book or article by the trainer of the moment and demand that the company “hire that guy!” Do not fall prey to fads or whimsy. During the course of your training needs analysis, define what you mean by leadership or communications or teamwork and find a program that reinforces your definition.

***How do I get my employees to attend the training sessions?***

Training is worthless if employees do not attend. Hard skills training, with its clearly identifiable objectives, can be an easier sell to an employee and, in most cases, will be mandatory based on job requirements. Workers sometimes roll their eyes at soft skills programs, thinking, “I don’t need to learn to communicate” or “I already know how to manage my time.”

**WORTH REPEATING: “YOU’LL NEVER GUESS WHO CAME TO TRAINING TODAY!”**

A community college conducting process improvement training invited a dean to attend for fifteen minutes. He stayed for an hour and a half, contributed, heard about items he could correct, and complimented the group on their progress. Attendees knew that the program was valued at the highest levels.

Launch your training effort by telling employees why you are offering the program and how you expect them to benefit. Frame the program as an investment in their development. When people at all levels of the company participate in a program, it sets an example and demonstrates top-down commitment. Even if executives do not attend the actual in-house workshops, they can show support by speaking at the opening of the session, to reinforce goals, or at the closing, to summarize results and encourage continued use of the new knowledge. Sometimes managers will pay lip service to the importance of employee development, but they gripe when employees take time from their work to attend training. This attitude may lead attendees not to take their training seriously, or to believe that management doesn’t really care about their progress.

Give participants sufficient advance notice of the session to plan their schedules, reminding them to complete any preprogram assignments, arrive on time, and turn off electronic communication devices. You may include attendance at training as a requirement in performance management or incentive plans. Track attendance through your HRIS system or other record-keeping process for use in future development discussions and to measure whether the training achieved the desired results.

***Once I have trained my employees, is it business as usual?***

Not exactly. Unless employees are able to leave the training course and immediately apply the concepts learned to their everyday business activities, most of what was learned will be quickly forgotten. Supervisors and trainees should meet before and after the training to devise an action plan for using newly acquired skills, whether this involves putting the knowledge to work in familiar situations or new areas of responsibility. Trainers can also have participants complete “contracts” to remind them of their commitments to use new skills. When facilitators send these contracts out

to employees two to four weeks after the training, it will serve as a gentle reminder of past learning.

***How do I evaluate whether a training program has really helped us improve?***

Provide participants with a program evaluation form as soon as possible after completion of training. The form (see Tools and Templates) should include questions and space for comments about the presenter, materials, training methods, and location or facility where the training was conducted. If the facilitator designs the form, have someone else in the company review it for ambiguities and objectivity. The form should take no more than twenty minutes to complete, and attendees should have the option of filling it out anonymously. Review the results and share them with the trainers so that they can make appropriate changes and improvements in future sessions.

The measures of success for the program should be the ones you identified before training began. Some data will be more readily obtainable, including reduction in errors or cost savings that are a direct result of the training. Others, such as reduction in turnover or cost per hire, will take longer to evaluate. Soliciting and publishing anecdotes from participants about situations where they used their new skills will aid reinforcement. Ask participants to rate the program after a period of time has elapsed to determine whether their learning actually helped them perform their jobs better. Ask supervisors and managers whether they detected an improvement in employee performance or departmental productivity after the program.

Reports by observers of the program who were not active participants can help you analyze success. A trainer summary that includes recommendations for changes to the next program or audience will make subsequent offerings even better.

Build upon successes in your training function. Truly responsive training is tied to business needs and planned in advance, not simply delivered as a response to a problem. Developing an annual comprehensive training plan that reflects your business strategy will keep the function fresh, responsive, and effective.

# Employee Relations and Retention

## How Do I Keep Good Employees and Maintain Working Relationships at All Levels?

**Y**ou have made the effort to find and hire the best candidates. You have oriented them to your company culture and spent time and resources training and developing them. Now you want to keep them—keep them working for your company and not the competition, and keep them content, motivated, and focused on the business.

When employees are unhappy in the workplace, when morale and productivity lag and turnover is high, the root problem is usually not compensation. Generally, these difficulties will be people-driven, stemming from poor communication, a perceived lack of appreciation and recognition, and unresolved grievances and conflicts.

This chapter discusses ways in which you can open and improve lines of communication, resolve conflicts before they become crippling, and let your employees know that they are valued.

### FOSTERING EFFECTIVE WORKPLACE COMMUNICATION

Ask executives and managers what is standing in the way of better effectiveness in their businesses and, more often than not, they will mention

the need for “better communication.” And they are usually correct. Poor communication does account for a multitude of workplace woes, including interpersonal conflict, wasted money and effort, poor productivity, legal exposure, low morale, and high turnover.

Whether your organization has five, 500, or 50,000 employees, the way it communicates will directly affect worker focus, morale, and commitment. A 2002 People at Work Survey conducted by Mercer Human Resource Consulting indicated that communication is a critical factor in employee retention. According to this survey, among employees who said that their organizations do not keep them informed, 41 percent are thinking of leaving and 42 percent say they are dissatisfied. Among employees who said that their organizations do a good job of keeping them informed, only 15 percent are thinking of leaving and 6 percent say they are dissatisfied.

What is good communication? It is providing the right kind of information and delivering the right message to your employees clearly and in the appropriate manner. Good communication is also about encouraging—and having adequate mechanisms in place to allow—employees to deliver information to management.

### ***What types of information should I be sharing with my employees?***

You should pass along information that will better enable employees to do their jobs, as well as news about the company’s progress, business changes, and other matters that affect the workforce. Be sure to communicate information to employees at all levels of the company, and don’t forget individuals who telecommute or work at remote locations. Types of information to share include:

- ◆ *Vision, Mission, and Goals.* It doesn’t matter what term you use, but you should let employees know what the company stands for, where it is going, and the progress it is making toward fulfilling its objectives. Employees want reassurance that management has a clear direction. Even if your company does not have a long-term business plan, talking with workers about where you would like to be in a year—or within the next six months—will help instill confidence and increase focus.
- ◆ *Business Results.* Make it a practice to inform employees how the business is doing financially. Whether or not you share this information, your workers will likely know if the company is doing well or is faltering. However, communicating in greater depth on this subject will make employees feel involved and will help them better understand the reasons for manage-



ment actions. Communicate financial results in a fashion with which you are comfortable and that your employees will understand. The information you share can range from complete P&L statements to percentage increases in revenue to cost of supplies.

◆ *Triumphs and Disappointments.* People who know that their work has contributed to a successful enterprise will be more motivated and fulfilled. So it is confounding that some organizations will report a large new customer or long-term contract to a newspaper but not their own employees. Do not be afraid to report on disappointments as well as successes. By disclosing information about situations that have not worked out so well, you can pass along what you learned from the experience and increase the chances of improving the next time.

◆ *Organizational and Business Changes.* If your organization is going through major changes such as a layoff, restructuring, office move, or sale of a line of business, tell employees sooner rather than later. You'll help to quell rumors and speculation, and your employees will feel flattered that you respected them enough to share this information.

### **WORTH REPEATING: SHOW OFF THOSE PRESS CLIPPINGS**

Successful companies keep employees well informed by displaying copies of ads and press coverage on bulletin boards in break areas or framed and hung on a wall. This practice helps to reinforce the company message and to demonstrate the company's role in the industry and local community.

### ***How open and honest do I have to be?***

There are some situations where you will not be able to pass on information because you are legally restricted from disclosure. Examples are pending mergers or acquisitions, securities transactions, or situations where you have signed nondisclosure agreements. Barring these restrictions, give workers the information they need to know to understand the business and direction of the company, and to be successful themselves. Never lie to employees or tell them half-truths. If people ask you questions that you are unable to answer for reasons of confidentiality, don't falsely tell them that you have no information on the subject. When they find out that you have been untruthful (and they always do!), you will lose credibility in the long

run. Instead, you might answer that you are not in a position to share the information at this time.

### ***What are the best methods of communicating to employees?***

The best method of communicating important information is in person. Depending on the circumstances, it may be better to communicate to people individually, in small groups, or if practical, to all employees at once. Some companies hold quarterly employee meetings at which the president and key executives report on business results and new developments. In other businesses, the president will meet with small groups for breakfasts or pizza luncheons where employees can ask questions and share their concerns. When you have employees at remote locations, regular visits from the president or other senior staff members will decrease their sense of being isolated from the company as a whole. The more critical the information you have to share, the more important it is that you communicate the news in person.

Letters from the company's president or owner or a senior executive are good ways to provide general information that employees can share with a spouse or family member. A letter mailed to the employee's home can summarize organizational performance, thank employees for their efforts, provide forecasts of upcoming business, or reinforce important workplace matters that would be strengthened by home discussion, such as the company's response to press about the business.

Newsletters are easy to produce and can be used to inform, reinforce company culture, announce company contests, and celebrate birthdays, new births, or service milestones. You can print your newsletter on paper and send it to employees at home or display it in work and break areas, or publish and distribute it electronically.

E-mail is a convenient way to get information out quickly, but it should be used sparingly as a method of primary communication. Since e-mail is impersonal, it should never be used to tell people about vital or controversial matters or news that is likely to arouse employee emotions. Also, since employees get numerous e-mails every day, they are more likely to accidentally delete the message or overlook its urgency.

Written memorandums are more formal than e-mail and less likely to be accidentally misplaced, but they are still not a substitute for face-to-face contact. Both memos and e-mail are perfectly appropriate for less critical matters, for follow up after a meeting, or in situations where you would like employees to follow detailed instructions or retain information for their records. If a message is very important, you should get it out repeatedly, though a variety of formats.

### ***What are the best methods to get information from our employees?***

Since communication is a two-way process, you will want to establish ways for your workforce to communicate with you. Employees will feel empowered and valued, and you will be able to glean important data that will help you run your business more effectively and act on those matters about which your workers are concerned. Never assume that you know what your employees are thinking. Instead:

- ◆ Encourage employees to ask questions in company, small group, and individual meetings. When holding small group meetings, try mixing employees at all levels to get a variety of perspectives.
- ◆ Conduct employee focus groups and surveys about attitudes and opinions. You may be surprised by what you learn.
- ◆ Have a procedure for employees to express grievances, and make sure that you follow up promptly and consistently with your policy.
- ◆ Establish a suggestion box where employees can submit questions or voice concerns. Devise a response format, and respond promptly and consistently to let workers know that you take their input seriously.
- ◆ Consider establishing an employee hot line run by an independent provider, or setting up in-house confidential voice mail boxes, so employees can report problems that they might be afraid to report otherwise.
- ◆ Walk around informally and talk to your people. Casual conversations can yield a lot of information. Managers should not sequester themselves in their offices.

### ***Can poor communication on the part of individual managers create retention problems?***

Absolutely, and this problem is exacerbated because many managers think they are better communicators than they actually are. There is an overused, yet true, saying that people do not leave their jobs, they leave their bosses. In employee exit surveys, the most frequent employee complaints about former supervisors involve poor communication skills. This isn't surprising because businesses do not always hire and promote managers based on their communication and management skills. Many individuals possess a wealth

**BETTER FORGOTTEN: “WHAT WERE THOSE SURVEY RESULTS?”**

A midsize employer hired an outside consultant to design and administer an employee opinion survey. The results were compiled in a comprehensive form and sent to all key managers. The company sent a summary to all employees and formed a committee to create action plans. Nothing else was done. One year later, when the company distributed another survey, only 5 percent of the employees even bothered to respond.

of knowledge in their fields and are highly skilled in the technical aspects of their jobs, but they fall short when it comes time to assign projects, convey expectations, and make employees feel good about working for the team.

There are certain common manager communication problems that, if identified, can be addressed. Do you recognize yourself or anyone in your organization in these descriptions?

◆ *Managing by E-Mail.* Far too many managers use e-mail as a substitute for personal interaction. Would you try to arrange and close a deal with a large customer via e-mail? Would you hire a key executive without meeting this individual? Of course you wouldn't, and neither would most experienced business people. However, the same managers who know that personal contact is key to interpreting a person's character and reactions and establishing commonality often choose to “manage by e-mail”—even when workers are in offices a few steps away. While no one should seek to discuss sensitive or delicate matters electronically, even everyday business is better handled through personal contact when possible. More direct contact helps create better rapport and trust.

◆ *Lack of Clarity.* Many managers assume that when they give instructions or discuss a business situation, everyone understands them and is ready to take action. Then, they are amazed and upset when the resulting project bears no relation to the outcome they had in mind. Often, different people make different deductions from the same information, and they proceed in good faith to do the opposite of what the manager expected. Clear communication results from asking the right questions, gaining clarity, and confirming what we have heard. Only then can people achieve a common

understanding of a business issue or course of action. Managers need to be aware of and facilitate this process. When giving assignments or instructions, ask open-ended questions to make sure the employee understands. Instead of saying, “Do you understand?” you might ask: “What steps will you take to complete this task?” Never make employees feel inadequate for asking questions.

◆ *Poor Listening Skills.* Since every communication involves at least two people with differing priorities, needs, and perspectives, it is just as important for managers to listen to their staff as it is to be heard. In addition to giving assessments and instructions, solicit feedback from employees. Ask if there is anything you can do as a manager to make their jobs easier or more satisfying. Consider their suggestions and treat the concerns that they raise seriously.

◆ *Failure to Give Consistent Feedback.* Some managers don’t tell employees what they are doing right or wrong during the course of the year, and then, at annual review time, they drop a bombshell on the unwary. While a well-considered annual performance evaluation is a valuable communications tool, employees resent when feedback is a once-a-year event. They also miss the opportunity to learn from their successes and mistakes. People do not like surprises, and they want an opportunity to develop and improve throughout the year. Provide continuing, constructive, on-the-job evaluations focusing on situations as they arise, while they are still fresh in everyone’s memory.

◆ *No Tact and Empathy.* Some managers have no problem giving feedback, as long as most of it is negative. They can pick away at the most minute details of a worker’s perceived problem areas or announce mistakes and deficiencies in front of others, but never offer a word of thanks or praise. Constant criticism is demotivating. Highlight the positive as well as the negative, correct mistakes without getting personal, and treat people as you would wish to be treated. Others will be more inclined to listen and respond.

◆ *Too Busy to Manage.* It’s true: Managers are busier than ever with their own heavy workloads, but many forget that an important part of a manager’s job is managing. It is critical to carve time out of your schedule for regular one-on-one and group employee meetings. While it is totally appropriate to make employees aware of your time pressures, offer your undivided attention during these meetings. Taking telephone calls or allowing other interruptions conveys to employees that you do not consider their concerns a priority.

***Once I have identified an interpersonal communication problem, what can I do to fix it?***

Improving communications involves a multifaceted approach, depending on the situation and the individuals involved. Since many people are not aware of their limitations in communicating, sometimes merely making them aware of their actions will be enough to bring about positive change. Most of the time, however, a bad communication style will be deeply ingrained in the manager.

You can use coaching and mentoring to effectively attack interpersonal communication issues. The coach can be someone within the organization or an outside consultant. For executives and senior-level managers, you will likely have more success with an outside coach or consultant. When coaching managers to improve their communication skills, keep in mind the following guidelines:

- ✓ Be explicit and use concrete examples. Instead of saying, “You are not a good listener,” you might say: “I noticed in the staff meeting that you talked right over Jane when she had questions about the deadline.”
- ✓ Show the negative impact *on the manager* of the bad communication. It is human nature that self-interest is the factor that most effectively generates change. For example, don’t simply tell the manager that he is not clear in his instructions. Try saying something like, “Because your staff had to redo their work so many times, you missed your project deadlines. If you take the time to explain your assignments at the outset, you and your team will have a better chance to earn the full quarterly productivity bonus.”
- ✓ Remove poor communicators, if necessary, from managerial responsibilities. Some people, no matter what you do, will not develop into good communicators. After unsuccessful coaching, you may rightly determine that they should not be managing others. Often, they will be just as relieved as you are when they are free of these responsibilities.

Small group training is an excellent way to teach your executive or management team to improve their management and communication styles. There are myriad fine outside and in-house training sessions on communication, management, and leadership. (For further discussion on choosing effective training options, see Chapter 4.)

## STRUCTURING REWARD AND RECOGNITION PROGRAMS

You may be able to lure new hires through the door with an attractive compensation and benefits package, but if you don't maintain a positive working environment they will leave to work elsewhere—sometimes for jobs that pay less. While it is important to provide fair pay, the key to creating an outstanding work environment is making people feel appreciated and recognized for the work that they do. No one likes to feel unnoticed or taken for granted. Reward and recognition programs let workers know that their efforts count.

An employee recognition program is different from an incentive program. Under an incentive system, you pay money or other valuable compensation for meeting specific performance goals. If a salesperson meets her sales targets, she will get a specified bonus, or if a development team gets a new product to market on time, each member will receive a certain amount. Recognition programs, on the other hand, appreciate people for their efforts as individuals, often for positive contributions that do not directly affect the bottom line. They can be a way to thank the receptionist who always greets visitors with a warm smile, or to acknowledge the financial analyst who puts forth the extra effort to make new department members feel welcome. Unlike incentive programs, reward and recognition programs can be inexpensive. While you may not be able to provide significant incentives in difficult times, it is easy and desirable to maintain a continuing program of employee recognition and appreciation.

### *How do I develop strong reward and recognition programs?*

The biggest mistake that businesses make is assuming they know how employees want to be recognized and structuring programs that do not reflect the real needs of their workers. As your workplace is made up of a variety of diverse individuals, one type of recognition effort will probably not work for everyone. Create a system that reflects both individual and group needs, and the type of culture that you want to develop or maintain.

- ✓ Determine the types of behavior and performance that you want to reward. Do you want to encourage good attendance? Team efforts? Creativity?
- ✓ Solicit employee input. If you want get an accurate perspective on the types of recognition your employees would value, ask them! You can

distribute surveys or hold individual or focus group meetings to attain this information. Get input from people at all levels of the organization. Different levels of employees may have different needs and motivations.

- ✓ Survey supervisors and managers who will be responsible for selecting the individuals that receive rewards. They will have some valuable feedback concerning how decisions should be made.
- ✓ Organize a committee to review employee feedback and make suggestions for activities going forward.
- ✓ Communicate the program clearly and consistently to employees. If you are implementing a formal program that has specific eligibility and performance requirements, explain them fully. Misunderstandings generate bad feelings.
- ✓ Be prepared to be flexible and to inject novelty and variety into the program. While employees may initially enjoy receiving a mug with the company logo for their efforts, when their desks are cluttered with company mugs over the years, this reward will not seem very special. Your goal is to inspire enthusiasm.
- ✓ Be genuine. If your managers shell out empty praise or you implement programs by rote, or out of a perceived obligation rather than a real desire to reward and inspire, your employees will spot your insincerity. In the end, they'll feel insulted and patronized rather than rewarded and inspired.

### **WORTH REPEATING: DON'T FORGET THE NIGHT STAFF**

A twenty-four-hour hospitality company holds regular midnight dinners for the overnight staff. Senior managers who come in late at night host the employees. The overnight staff appreciates the recognition and the opportunity to get answers from the source. Don't leave your night workers in the dark.

### ***What types of recognition programs should I consider?***

Your efforts should include both formal and informal recognition. The possibilities are limited only by your imagination, but the concepts that follow can serve as a starting point.



*Praise.* Praise doesn't cost a dime, and there are few people who don't appreciate a sincere compliment or word of acknowledgment. Instill in your managers the importance of praising employees both for outstanding effort and positive results. Praise is most effective when it is specific and delivered at the time when workers do something right. Rather than saying, "You have a good attitude," say, "Several customers have praised your responsiveness on this project." This statement gives the employee direct reinforcement and will encourage him to continue that behavior.

*Small, Informal Reward Items.* These include inexpensive symbols of gratitude that are usually presented spontaneously, by the employee's manager. These modest "on the spot" tokens are very effective, but should not be given so often that they begin to seem routine or arbitrary. Examples of these rewards are thank-you notes; T-shirts, mugs, or other trinkets; plaques and certificates; impromptu, informal luncheons; parking spaces; gift certificates; or movie and sporting events tickets.

*Awards Luncheons or Dinners.* These meetings are more formal than impromptu pizza parties and are usually held periodically to celebrate milestone service periods. Awards luncheons and dinners are also excellent methods of recognizing exemplary employees in front of their peers. Don't just stand up and hand your outstanding workers plaques or pins at these events. Build camaraderie and motivate employees to strive for the reward by publicly explaining why the recipient's work mattered, sharing stories and humorous anecdotes.

*Larger Merchandise Rewards.* As merchandise awards are more costly, they are usually reserved for service awards or the achievement of a significant goal. As a rule, it is not the value of the gift that is important but the recognition itself, and awarding items of substantial value on a frequent basis can result in employees focusing more on the prize than on their work. Some organizations successfully award employees "points" for designated behaviors or achievements, which they can accrue and redeem for merchandise in the future.

*Internet-Based Reward and Recognition Programs.* While online programs lack a personal touch, they can be a fast, convenient, and inexpensive way to administer and track reward programs. There are many online vendors that offer software packages and record-keeping services that allow employees to track the status of their awards and redeem them for merchandise online. Of course, this type of program only works with an Internet-literate workforce.

**WORTH REPEATING: “GIVE THEM A TOUR!”**

A start-up energy research company held an open house and invited employees to bring friends and family for a tour. Senior managers acted as tour guides and met attendees who enjoyed light refreshments. Employees loved showing off their workplace, and the cost was minimal.

***Is it safe to hold a holiday party for my employees?***

A holiday party is a common way to thank workers for their efforts during the year and to thank customers for their support. However, given the current legal climate, it is important to plan these events carefully. As an employer, you may be held legally responsible if an intoxicated employee gets into a car accident on the way home from your event. Other inappropriate employee behavior can result in harassment charges, workers compensation claims, and other legal liabilities for a company.

Most companies still find that the benefits of a party outweigh the risks, so they hold some type of holiday festivities for their workers. You can minimize risks by observing the following standards:

- ✓ Hold the party off company premises and outside of normal business hours.
- ✓ Notify employees that attendance is optional and avoid negative actions or comments when an employee does not attend.
- ✓ Circulate a memo to all employees, before the party, emphasizing the importance of moderation in drinking (if you are serving alcohol) and reminding them that the company’s policies regarding sexual harassment and discrimination apply to company parties.
- ✓ Take precautions if you do serve alcohol. Hire bartenders or caterers—don’t let company employees mix drinks. Have plenty of nonalcoholic beverages on hand, and provide entertainment or some other activity for attendees besides drinking. You might consider providing vouchers to limit the number of drinks served, or limit the hours during which alcohol is served. Instruct bartenders not to serve minors and to stop serving individuals who seem intoxicated. Designate employees to circulate during the party to spot those who do not look sober. Provide transportation home by means of designated drivers or company-paid

taxi for those who request it or are deemed unable to drive safely. If you are holding the party at a hotel, negotiate reduced rate hotel rooms for employees.

- ✓ Encourage employees to bring spouses, significant others, and children, if appropriate. This practice increases the likelihood that the occasion will be festive but professional. Misbehavior is much less likely to occur in a family environment.
- ✓ Take any employee complaint about harassment or any other improper conduct at the party seriously and investigate it just as you would complaints about regular activities during business hours. Don't write off an allegation just because the behavior occurred at a party.

### **BETTER FORGOTTEN: "WAS THAT ENTERTAINMENT?"**

A well-intentioned marketing company hired a comedian for its employee holiday party without thoroughly checking him out. The comedian regaled the group with off-color stories and offended several employees. This was embarrassing for the company, and it could have led to serious complaints. Choose entertainment that will engage employees, but that's appropriate for the occasion.

## **MAINTAINING WORK-LIFE BALANCE**

A significant amount of an employee's waking hours are spent at work. Not long ago, for most people this meant showing up at their workplace for a defined time period each day and, depending on the organization, putting in additional hours or "face time" after regular hours or on weekends. Increasingly, employers are finding that helping workers to create and maintain a balance between their home and work lives is key to retaining the best employees. Through alternative work and scheduling arrangements and other life and family-friendly programs, employers that help employees reduce stress and gain personal satisfaction reap the benefits of a more loyal, motivated, and productive workforce. These programs can make your company more desirable to prospective employees and have even been shown to help decrease absenteeism among existing workers. There is no "one size fits all" approach to flexible scheduling. Whether a particular program will work for you depends largely on the specific needs

and characteristics of your workforce. Before creating and implementing any plan, survey your employees to determine their needs so that you don't spin your wheels developing something that will not be seen as a benefit.

The most common alternative work arrangements include:

- ◆ Flextime
- ◆ Telecommuting
- ◆ Job sharing
- ◆ Compressed workweek

### ***What is flextime and how does it work?***

Flextime is a term for variable schedules that allow employees to vary the start and end times of their workdays while still working a standard number of hours within a given workweek. Employers designate a set of core hours during which all employees must be at the workplace, as well as the hours that are "flexible" for the employee. For example, you might designate the core hours as 9:00 A.M. to 4:00 P.M., and permit your workers to start their day between 7:00 and 9:00 A.M. and leave between 4:00 and 6:00 P.M., depending on the time they start. Flextime is an attractive option to help employees deal with family issues, commuting patterns, and educational, volunteer, and wellness activities. Flextime programs can be structured on an ongoing basis or occasionally as needed by an individual. These programs are also attractive to employers because they can generate significant goodwill at virtually no cost to the organization.

### ***Are there any downsides to offering flexible scheduling alternatives?***

If employees are on different schedules, it may be more difficult to arrange meetings and coordinate work assignments. Most organizations handle this issue by requiring that meetings be held during core business hours.

In addition, you may encounter some negative reactions from employees who are not eligible to participate in the program. Not every position within your organization will be appropriate for flextime, either because of specific hours during which work must be performed, supervision needs, department staffing requirements, or customer expectations. Or there may be conflicts in a particular department if too many employees request a particular alternative schedule. You are permitted to grant flextime benefits selectively to employees, as long as you do not discriminate and your criteria are reasonable in relation to your business. You may properly resolve conflicts using such factors as seniority or rotation. Generally, managers

have discretion to grant requests for flexible scheduling arrangements, to ensure that the department or work group is adequately staffed at all times. Instead of just rejecting an employee's request for flexible hours, explain your reasoning. It will help to diffuse any resentment.

### ***What is telecommuting?***

Telecommuting, or telework, is an increasingly popular benefit that allows employees to work from a location other than the office, usually from their homes. Generally, telecommuters will work one or two days per week from the alternate location, but other telecommuters work from their homes virtually full-time. There is even a growing number of businesses with "virtual offices," where there is no physical headquarters and all employees work from their homes. Like flexible work hours, telecommuting is a low-cost option for employers that can improve recruitment and retention rates. But because the telecommuting individual will be spending some or all of core work hours outside of the office, there are additional considerations involved in setting up and administering the arrangement.

### ***How do I decide who should telecommute, and is there anything else I need to know?***

Telecommuting is not appropriate for all jobs or all employees. When you evaluate an individual's request to work away from the office, or think about creating a new telework job, examine the position and whether the candidate has the personal attributes to be effective as a telecommuter. Is the position one that *must* be performed at the workplace? An assembly-line supervisor or a mailroom employee could not do the job from home. Does the job involve definable, measurable results and specific deadlines? Jobs that do—such as writers, editors, or computer programmers—are better suited to telecommuting because you will be able to better measure productivity. Telecommuting works best for productive, skilled individuals who can work independently and meet deadlines without constant direction.

Determine what equipment and technology employees will need to do their jobs from home, and whether the company or the employees will provide it. Necessary tools may include a high-speed Internet connection; a secure way to dial into the company network; a dedicated telephone line with voice mail, conference calling, and other business features; computer equipment; and fax machine. When teleworkers deal with customers, vendors, or other outside parties, you will want to be sure that their home-

office projects a professional image that reflects the standards of your organization.

Just because an employee works at home doesn't relieve you of the obligation to comply with minimum wage or overtime requirements, nor are you exempt from all responsibilities to provide a safe workplace. Workers can and have filed workers compensation claims for injuries that occurred while telecommuting. While laws regarding workplace safety for telecommuters are still emerging, at a minimum workers should be trained on how to avoid foreseeable job-related injuries, such as repetitive motion or carpal tunnel disorders.

### **BETTER FORGOTTEN: "WHAT TIME DID YOU CALL?"**

A telecommunications company had a work team of six employees working from their homes in four different time zones. These people never met each other face-to-face. No one set norms or guidelines or clarified terms on when to call. Customers suffered. Set clear guidelines for interactions with telecommuting employees.

Although telecommuters will be spending significant time outside of the office, treat them as an equal part of the team. Involve them in all critical communications; let them know about major events at the same time you inform other workers. Inform them at the outset how often you expect updates on their progress, and provide continuing feedback.

### ***How do I know I can trust my employees to be productive on flextime or when working from home?***

When an organization adopts flextime or telecommuting arrangements for the first time, trust issues inevitably surface. A manager may ask, "If I do not arrive until 9:00 A.M., how will I know that Ralph has been in and working since 7:00?" or "What will prevent our telecommuters from sitting in front of the television all day instead of working?" Flexible scheduling arrangements encompass an element of mutual trust. But then again, you cannot be assured that a worker spending all day at his desk in the office is being continually productive, either. Discuss expectations and any timekeeping arrangements at the outset, and put them in writing. Flexibility is a privilege, not a right. Let employees know that if productivity

declines or if they are found to be abusing the system, you will rescind this privilege.

### ***What is job sharing and will it work in my organization?***

Job sharing allows two or more employees to share the responsibilities of one job. It is a way to attract and keep qualified individuals who, either because of conflicting priorities or lifestyle choices, do not desire to work full-time.

Usually, the employees who wish to share a job will present a proposal to management that outlines the job coverage schedule and how responsibilities will be divided. Compensation is agreed between the company and the job sharers, but employees working less than full-time hours may be receive reduced or part-time benefits. In determining whether a proposed job share arrangement is right for your organization, ask yourself:

- ◆ Are both employees individually qualified to do the job?
- ◆ Does the proposed division of responsibilities make sense, given the operations of the business?
- ◆ Have the proposing employees presented a system that will allow for a smooth transition between their work shifts?
- ◆ Do the employees have a method of continually communicating with each other regarding status of responsibilities and projects, and for handling communications from others in the company? Other employees and outside parties should be able to assume that information given to one job sharer will reach the other.
- ◆ Are adequate work facilities available? Will the partners be sharing a desk and a telephone line?
- ◆ Will there be overlap in work hours that will make space sharing impractical?
- ◆ How will coverage be handled when one job share partner is on vacation or out sick?
- ◆ Will both partners be available for mandatory training or on-site meetings?

### ***What are compressed workweeks?***

A compressed workweek allows full-time workers to complete the minimum weekly required hours in less than five full days. For example, to meet a required forty-hour workweek, employees might work four ten-

hour days a week and get the fifth day off, or work eighty hours within a nine-day period and get the tenth day off. There are no specific legal requirements for structuring compressed workweeks, except that you must comply with any state or local overtime regulations applying to workdays of longer than eight hours.

While compressed workweeks are usually best suited to manufacturing businesses, hospitals, or positions where contact with customers is pre-arranged (e.g., doctors, lawyers, accountants, etc.), if this type of program fits in well with your business, there is no reason not to consider implementing it.

### ***How do I implement these nontraditional options in my organization?***

Once you have determined that your workers and your organization could benefit from alternative work arrangements, develop clear written plans or policies and communicate them to employees. While the plans will vary according to the details of the arrangement, you will want to include:

- ◆ A detailed description of the parameters of the program (e.g., the core and flexible hours included in a flextime program or acceptable work schedules for a compressed workweek; the types of positions suitable for the program; and other eligibility issues)
- ◆ Instructions for submitting employee requests under the plan or policy
- ◆ Criteria for managers to use in deciding whether to approve or reject requests, or for creating a new position specifically designed for a nontraditional work arrangement
- ◆ The consequences for misusing the program
- ◆ A statement that the organization has the right to change, suspend, or terminate the programs at any time and for any reason

Upon approving an individual employee for participation in a flextime, telecommuting, or job sharing program, it is helpful to draw up a written agreement signed by both the manager and employee with specific details of the situation. You can use this “contract” to evaluate the success of the arrangement or as documentation in the event of a future employee problem.



## RESOLVING WORKPLACE CONFLICTS

No matter how well run your organization is, disputes, conflicts, and grievances will inevitably arise. As individuals, we have our own ideas and goals, and it is only natural that in pursuing our own agendas we will sometimes be at odds with others with differing objectives and viewpoints. Life in business organizations is no different. In fact, today's businesses are especially vulnerable to conflict. They employ an increasingly diverse workforce, operate in a complex, global economy, and navigate pressures to deal with rapid change and increased productivity requirements.

While all businesses contend with conflicts and disagreements, some are able to turn their experiences into learning and growth opportunities and others let the animosities devolve into anger, low morale, high turnover, and employee lawsuits. The difference between positive and crippling results is directly connected to the organization's ability to identify healthy versus unhealthy conflict, and to manage and resolve disputes and grievances before they get out of hand.

### *Isn't all organizational conflict undesirable?*

Some amount of conflict is not only desirable, it's also necessary. Without a broad range of ideas presented by persons with diverse backgrounds, experiences, and points of view, innovation is virtually impossible. Conflict can also present an opportunity for personal growth. When we learn the skills to work out our differences and to develop approaches that take into account the needs of others, we become more effective and aware business people.

The difference between "healthy" and "unhealthy" conflict is this: While healthy conflict revolves around the vigorous exchange of ideas in the best interests of the organization, unhealthy conflict is based on anger, frustration, and personal animosity. The key to effective conflict management is to create an environment that encourages workers to challenge ideas and forbids them from attacking people.

### *Are there systems we can implement to prevent and resolve workplace disputes?*

While it is tempting to ignore a problem and hope that it resolves itself, conflicts rarely do. Instead, they fester and spread. By taking a proactive approach, you will be able to uncover and address problems before they escalate into full-blown feuds or lawsuits. There are several practical techniques for preventing and resolving differences in the workplace. Some

organizations have formal conflict resolution programs; others resolve differences through less structured means. Larger companies will often use internal ombudsmen or independent negotiators or mediators to facilitate communications among the parties, but in smaller companies, the success or failure of conflict resolution efforts will depend on the conflict management skills of the managers. Every business must select the methods that best fit the culture of the company and its resources.

The most common conflict resolution program is the “open door policy,” which gives employees the opportunity to resolve problems with their managers or coworkers. Traditionally, these programs provide that employees first bring the problem to their supervisors (or the next level in the hierarchy if the problem is with the supervisor). If the supervisor is unable to resolve the issue, the employee may elevate the grievance to the next higher level of supervision, and then to successively higher levels until the problem is satisfactorily addressed.

While open door policies give workers a defined, structured way to have their issues heard, there are limitations to the process. An open door policy is only as effective as the conflict resolution skills of the managers addressing the issues. Additionally, these policies rely on employees to initiate the issue resolution process. Often, individuals will not come forward, and it will be up to the manager to recognize the problem and take steps to resolve it. Whether or not you have a formal issue resolution procedure, it pays to train managers and supervisors to build awareness about conflict management and to enhance intervention, mediation, problem solving, negotiation, and other conflict resolution skills.

Provide individual coaching for executives and managers who require special assistance with conflict management, either as an element of their career development or to help them deal with special situations. Executives must set a standard from the top. If middle managers feel disrespected, attacked, or stifled by senior management, chances are that they will pass this negative attitude down to the employees they supervise.

### ***Are there basic conflict resolution skills we all can learn?***

Yes. When a conflict arises in your workplace, consider these guidelines:

- ✓ *Call the disputing parties together in a neutral area, such as your office or a conference room. Treat the meeting as a serious occasion. Do not take telephone calls or allow other interruptions. Tell them that you have observed or been informed that there have been difficulties between them, and ask to hear each person’s side of the story. Listen carefully*

and empathetically. Commonly, people will interrupt each other to argue their side of events. Firmly state that you will hear only one person at a time, that you expect everyone to listen to each other, and that everyone will get a chance to speak.

- ✓ *Do not show a bias toward any individual's point of view.* If you show sympathy with one of the parties, the other will invariably lose trust in the process and stop sharing openly. It is not your job to be the judge of who is right and wrong. You are there to help the parties accept their differences and work toward a meaningful solution.
- ✓ *Keep the discussion focused on the issue at hand.* If the participants begin to ramble or drift off topic, gently guide them back. Focus on the present and the future, rather than letting parties bring up old, unrelated gripes. Never permit personal attacks such as, "John is an idiot," or "Mary is lying." Do not interject your own opinions or experiences. This dispute is not about you.
- ✓ *Probe until you understand the root cause of the conflict.* Even substantive disagreements are often fueled by interpersonal differences. John and Mary may appear to be arguing about setting a project timetable, but the problem could have roots in John's perception that Mary disrespects him. Address the interpersonal issues before attacking the substantive ones.
- ✓ *Do not ignore emotions.* Behind every dispute there are real emotions, such as hurt, anger, and betrayal. While you should not dwell on the emotions involved, it is important to acknowledge that they exist. Expressing their emotions will help the parties obtain closure and move on.
- ✓ *Work with the parties to find a way that they can both come out "winners," focusing on common goals.* If John and Mary are fighting about the details of a project timetable, remind them that while their approaches may differ, they both have an interest in seeing that the project is successful and, if the project fails, both of them will suffer. Ask each of them about the compromises they would be willing to make and those that they would like to see from the other to ensure the success of the project. The plan does not have to be a complete compromise, but the result should be acceptable to both individuals. Sometimes early efforts to resolve the conflict will be fruitless. In this event, be prepared to stop the meeting and resume it at another point, giving the parties the opportunity to think through the points discussed. When you have reached an agreement, put the plan in writing so each person has something they can refer to and work with.

- ✓ *Follow up periodically.* If the conflict is significant, don't expect miracles overnight, but look for indications that the individuals are acting on the plan as agreed and taking steps forward. Tell the participants that it is okay to take small steps, and recognize their accomplishments as they attempt to work through their differences.

## WHEN EMPLOYEES LEAVE: CONDUCTING THE EXIT INTERVIEW

Even if you have made every effort to create a positive work environment, employees will leave the organization. Sometimes the reasons can be completely personal, such as relocation or the desire to stay at home with a child. Other times they stem from the employee's dissatisfaction with the company. Conducting structured exit interviews with departing personnel is an excellent way to identify causes of turnover. Employees leaving the organization are likely to be more honest with you than those who you currently employ. You can use the results of exit interview surveys to determine whether there are underlying problems that are causing people to leave, and to build a strategy for improved retention.

### *Who should conduct the exit interview and what should they ask?*

A member of the human resources department or other neutral person will typically conduct the interview. The employee's manager should never conduct the interview because the employee would be reluctant to be completely honest, especially if the manager's behavior or style contributed to the decision to leave. Interview those employees who have voluntarily resigned from the company. Fired employees are less likely to give you objective information. You may choose to use a written questionnaire, but with verbal interviews you can ask follow-up questions. Conduct the conversation in a quiet place where it will not be overheard, or on the telephone, and assure the employee that all responses will be kept confidential.

Ask questions that will elicit information about the perception of your company as a place to work and will help you to identify trends developing in any specific area or with an individual manager. (See the sample exit interview questions in the Tools and Templates section.) To maintain confidentiality, keep exit interview data separate from the employee's personnel file.

**WORTH REPEATING: “I’M IN THE CLUB NOW!”**

A large regional law firm established an “alumni club” for attorneys who leave the firm. The firm distributes a semiannual alumni newsletter communicating business and personal news about the firm and its members, and holds a barbeque or cocktail party for the club every year. Alumni retain a sense of attachment to their “alma mater” and regularly refer clients to the firm.

***What happens if the employee reports harassment or other illegal conduct in the exit interview?***

Occasionally, employees will report in the exit interview that they resigned due to a supervisor’s sexual harassment or commission of fraud. Even though the employee is leaving and did not file a complaint during the course of employment, you are still obligated to treat the matter seriously. Ask employees for full details of the conduct and why they chose not to report it earlier. Conduct a full investigation and, if you find the complaint to be justified, take appropriate corrective action regarding the offending party. (See Chapter 9 for more information on how to conduct employee investigations.)

Sound employee relations are important in all phases of the employment cycle, including departure. You may feel inconvenienced or upset when workers leave, but do not try to make them feel uncomfortable about their decision or treat them as the enemy. A former employee can be an ambassador for your organization to potential employees and customers, and you may end up hiring this person again in the future.

# Compensation

## How Should Employees Be Paid?

If you want to elicit strong emotions from a group of workers, ask them about compensation. Everyone has an opinion about the subject, most of the time relating to something they believe their organization could be doing better. Yet certain aspects of compensation are shrouded in secrecy and discomfort. Employees often fear requesting raises or are reluctant to ask questions about pay. Similarly, many managers hate responding to requests for raises or cannot answer even the most basic compensation inquiries. When compensation issues are not addressed head-on, they lurk behind the scenes and become sources of rumors, misinformation, and discontent.

The problems that organizations and individuals face when communicating information about pay stem from the very personal nature of compensation and the complexity of wage and hour laws. Some companies face additional challenges because they do not have, or fail to inform employees about, an organizational compensation philosophy or policy. In this chapter, we will discuss the relevant wage and hour laws, and other considerations involved in developing, implementing, and disseminating a total compensation strategy.

### WAGE AND HOUR LAWS

Compliance with federal wage and hour laws begins with your obligation to prominently post the federal wage and hour compliance poster in your

workplace. Many companies sell wage and hour posters, but you can get them for free by calling your local Wage and Hour Division of the Department of Labor or by downloading them directly from their Web site.

The next step is to make certain that you, or the company that completes your payroll, keep proper employee payroll records that include:

- ◆ Name and Social Security number
- ◆ Address (including zip code)
- ◆ Date of birth (if under eighteen)
- ◆ Gender and occupation
- ◆ Time and day of work and when work begins
- ◆ Hours worked each day
- ◆ Total hours worked each workweek
- ◆ Basis upon which wages are paid (e.g., hourly or weekly rate of pay)
- ◆ Regular hourly rate of pay
- ◆ Total daily or weekly straight time earnings
- ◆ Total overtime earned for the workweek
- ◆ All additions or deductions from employee's wages
- ◆ Total wages paid each pay period
- ◆ Dates of payment and pay period covered

If an outside vendor completes your payroll, it maintains this information and can provide it to you in an easy-to-understand format.

### **WORTH REPEATING: DON'T FORGET TO AUDIT**

A manufacturer with multiple locations performed selected audits each pay period, reviewing checks/stubs from a different department each time to make sure they matched employees' addresses and Social Security numbers. One audit uncovered extra vacation payments that had been requested by a manager who was using the money to support a gambling addiction.

### ***What do the minimum wage laws mean for my business?***

The wages that you pay your employees are not determined by legislation, but there are laws that establish minimum hourly rates. The Fair Labor

Standards Act (FLSA) of 1938 sets a federal standard for the lowest rate of pay per hour of work for most jobs. Many states also have their own minimum wage laws. In situations where federal and state laws are different, you must comply with the law that is most generous to the employee.

There are some very narrow exceptions to the federal minimum wage requirements. You do not have to pay minimum wage to tipped employees who earn at least the minimum wage when their tips are added to their direct wages, or to workers under twenty years old during their first ninety days of employment. You can get information about these and other exemptions from the U.S. Department of Labor.

No more than 5 percent of all U.S. employees receive the federal minimum wage, because in most locations it is not a competitive rate of pay. There are states and localities that require that area standards or prevailing wages be paid to contractors performing work for municipal agencies. Some municipalities have also adopted a minimum wage called a “living wage.” Living wage campaigns are generally driven by coalitions of community groups, religious leaders, and unions with the intent to require private employers that benefit from government contracts or funding to pay their workers at rates at least at the local poverty level. There are more than 100 living wage ordinances with varying requirements in locations throughout the United States.

### ***When do I have to pay my employees overtime?***

Under the FLSA, employees working over forty hours a week are entitled to overtime, unless they qualify for certain specified exemptions. Employees who are legally eligible for overtime are often referred to as “nonexempt,” as opposed to “exempt” workers who fit into one of the excepted categories. Exempt workers receive their full salaries for each workweek regardless of the number of hours they work. However, you cannot avoid your overtime obligations merely by classifying workers as exempt and paying them salaries. The FLSA sets out strict guidelines for determining whether a position qualifies for an exemption.

As an employer, you are responsible for determining which positions in your organization are exempt, and for defending your reasoning, if challenged. In March 2003, the U.S. Department of Labor issued proposed wage regulation changes that had not been resolved as of the publication date of this book. Under resolutions in effect at the time of publication, general exempt categories are as follows.

### **Executive Exemption**

To qualify for the executive exemption, a significant portion of the job must entail managing others. These individuals:



- ◆ Direct the work of two or more full-time employees
- ◆ Have the authority to hire and fire or make recommendations about the employment status of others
- ◆ Regularly exercise a high degree of independent judgment in their work
- ◆ Receive a salary that meets the requirements of the exemption (this amount is periodically adjusted under the laws)
- ◆ Do not spend more than 20 percent of their time on nonmanagement functions (40 percent in retail and service businesses)

### **Administrative Exemption**

This category is often overused, but should be limited to those who:

- ◆ Perform office or nonmanual work that is directly related to the management or general business operations of the employer or its customers
- ◆ Regularly exercise discretion and judgment in their work
- ◆ Either assist an owner or executive, perform specialized or technical work, or execute special assignments
- ◆ Receive a salary that meets the requirements of the exemption
- ◆ Do not spend more than 20 percent of their time on work activities other than as described above (40 percent in retail and service establishments)

### **Professional Exemption**

The professional exemption recognizes those positions requiring special skill and training. Employees in this category of exemption must:

- ◆ Perform work that requires advanced knowledge and education, or work in an artistic field that is original and creative (e.g., a teacher, a computer systems analyst, programmer, software engineer, or someone similarly skilled in the computer software field)
- ◆ Regularly exercise discretion and judgment in their work
- ◆ Perform work that is intellectual and varied and cannot be standardized as to the time it takes to accomplish this work
- ◆ Receive a salary that meets the requirements of the exemption
- ◆ Not spend more than 20 percent of their time on work activities other than as described above

There is a separate exemption for certain designated computer professionals who are paid on an hourly basis.

## Outside Sales Exemption

The outside sales exemption applies to employees who:

- ◆ Engage in making sales or obtaining orders away from their employer's place of business
- ◆ Do not spend more than 20 percent of the number of hours typically worked by nonexempt employees doing work other than making sales

### *How can I avoid mistakes in classifying positions?*

You can minimize your risk by carefully reviewing your current wage and hour practices. In your analysis, pay attention not only to job descriptions of exempt employees, but also to the way each job is actually performed, to ensure that only those employees who are legitimately exempt are classified and paid that way. A position is not automatically exempt just because the job has a managerial-sounding title or because the employee has a professional degree that is not applicable to the job. It is the actual duties of the worker, and the percentage of time spent performing those duties, that count.

#### **BETTER FORGOTTEN: "BUT THEY ONLY SIGNED IN!"**

When wage and hour investigators audited a national retail chain, they learned that although the company classified its assistant managers as overtime exempt, the managers were required to sign in at the beginning of their workday and sign out for their break and at the end of the day. The company also kept careful records of their hours worked. As a result, the company's position in the investigation was severely compromised.

Pay exempt employees strictly on a salary basis. Generally, you must pay exempt workers their salary for each week that they perform work, regardless of the quantity of work performed or availability of work. With limited exceptions, you cannot take deductions from their pay because of

sickness, partial day absences, or jury service. If you take deductions from the salary pay of exempt employees, they may lose exempt status and you may be obligated to pay them for back overtime.

### *How do I calculate overtime payments?*

The FLSA-mandated overtime rate is 1.5 times the nonexempt employee's "regular" hourly rate of pay for all hours worked over forty hours during the week. Employers frequently make the error of calculating the amount based on the worker's "base" hourly rate of pay. When workers earn a flat hourly rate, the regular and base rates will be the same. When employees work at two or more different rates or earn commission, bonuses, payments for good attendance, or other forms of compensation during the week, you must include these variables when determining the regular hourly rate.

Here is an example of this calculation: An employee works forty-five hours in one workweek—thirty hours at \$15 per hour and fifteen hours at \$20 per hour—and also earns a \$40 commission for the week.

*Step 1.* Multiply the hours worked by the hourly rate for those hours:

$$\begin{aligned} 30 \text{ hours} \times \$15 \text{ per hour} &= \$450 \\ 15 \text{ hours} \times \$20 \text{ per hour} &= \$300 \end{aligned}$$

*Step 2.* Add the totals from step 1, plus the \$40 commission, to get \$790 total base pay.

*Step 3.* Determine the regular rate by dividing the total base pay by the total hours worked (i.e.,  $\$790 / 45 \text{ hours} = \$17.55$ ). This is then the regular rate for this week. So for forty hours of work, this employee would earn \$702.

*Step 4.* The overtime rate of time and a half is calculated on the rate determined in step 3 (i.e.,  $\$17.55 \times 1.5 = \$26.33$ ). Five hours of overtime equals \$131.65.

*Step 5.* Add the forty hours at the regular rate plus the overtime:

$$\$702 + \$131.64 = \$833.65$$

Had there been no commission involved, you could have avoided the calculations by paying all of the overtime based on the higher rate of pay, because this rate will always be higher than any regular rate that was calcu-

lated as a weighted average. In any week where the employee has earned a commission or other extra payment, always do the calculation, since the regular rate may be higher than the highest of multiple hourly rates.

You are obligated to pay nonexempt employees for time worked, whether or not the work was on the clock and whether or not any off-the-clock work was voluntary. It is not enough to have a policy stating that managers must approve all overtime—if your employees were working, with or without manager permissions, they are entitled to pay. Company-sponsored meetings and training sessions also count as hours worked for overtime purposes. It is critical to develop accurate methods to keep records of actual time worked by your nonexempt workforce and to ensure compliance with company overtime policy.

You may be subject to additional state or local laws regarding the payment of overtime, or setting working hours or break times. There is no federal requirement to pay overtime for hours worked on Saturday, Sunday, or holidays, but some state or local governments require employers to pay premiums to those who work on these days. In some jurisdictions, you must pay overtime to nonexempt employees if they work more than eight hours in one workday, regardless of the number of hours they work in a week.

Wage and hour investigations are most often triggered by a complaint from a disgruntled current or former employee. Once state or federal investigators begin an audit, they are likely to continue their work until they find a violation. Because audits are time-consuming and penalties for violation can be significant, it is best to be proactive in understanding and complying with the laws. If you have questions regarding interpretation of any of the wage and hour regulations, seek the advice of an experienced professional. Your local department of labor can be very helpful in answering inquiries and will not use the information you provide to seek out potential violations.

## THE COMPENSATION SYSTEM

Since it is unlikely that you will be paying your entire workforce minimum wage, you will need to determine what to pay them. You will make better decisions if you take the time to determine your compensation philosophy. Compensation decisions guided by a sound framework or philosophy will result in practices that make sense for your business.

### *How do I figure out my compensation philosophy?*

Start by answering the following questions:

- ◆ What can you afford to pay and continue to earn the profit margins you expect?

- ◆ How should pay compare to similar positions in relevant markets?
- ◆ Will you offer bonuses or incentives?
- ◆ Will you give cost-of-living increases to keep up with inflation?
- ◆ How much will you spend on benefits, and how will this influence pay rates?
- ◆ Will you follow the same philosophy in different parts of the business or different geographic locations?
- ◆ Who will make decisions regarding pay and raises?
- ◆ How and when will raises be given?
- ◆ How often will you review your compensation philosophy?
- ◆ How will you communicate this philosophy to employees?

There is no right or wrong answer to any of these questions. If you are a small company with limited opportunity for growth and promotion, you may believe that you should pay higher wages than other companies in your area or industry. Alternatively, you could decide that your wage rates will be average, but you will offer an incentive plan linked closely to company financial performance.

Whatever decisions you make, put them in a written format that you can share with employees. This may take the form of a policy, a statement in an employee handbook, or notes or minutes of a senior management or owners meeting. Be prepared to review this philosophy or policy at least annually. Changes in your business, including growth, acquisitions, new products, economic conditions, available talent pool, and competition, can trigger revisions.

*Now that you've laid the foundation, it's time to build the framework!*

Armed with your compensation philosophy, the next step is to implement a system to help you make decisions and resolve problems about pay. The most effective compensation systems are those that are relatively easy to understand and administer.

Unless both internal equity and external competitiveness are present in your compensation practices, you will have a difficult time attracting and retaining employees and keeping up morale. Internal equity relates to whether the compensation structure reflects the relative value of jobs and people within the organization. External competitiveness ranks compensation alongside competitors or comparable positions in different industries.

## Setting Rates of Pay

### *What are pay grades and how do I use them?*

Pay grades, sometimes called rate ranges or steps, are the basic element underlying the majority of formal compensation structures. Under these systems, organizations group jobs of similar values into grades. Each rate range reflects a distinguishable pay difference from others and will include a variety of jobs. Within every grade, there is a salary minimum, a midpoint, and a maximum, with the minimum and maximum salaries generally about 15–20 percent lower/higher than the midpoint. People with little or no experience typically begin at the bottom of the rate range. The midpoint of the range is generally the “going rate” for the position.

Structuring a wide salary spread within each grade allows businesses the flexibility to recognize differences in individual performance and accommodate salary growth. However, if the salary spread is too wide you will have less control over your pay rates. Usually, the higher the level of position, the broader the salary range. There are no set rules regarding how many grades an organization should have. It depends on the size of the company, the complexity of the reporting structure, and the range of jobs.

Some organizations use a variant of pay grades called *broad banding*, a concept that employs fewer grades and much wider salary spreads.

There are several approaches to slotting positions into grades. Some companies perform job analyses using such factors as the level of skill, education, and experience required; responsibilities such as number of reports and fiscal oversight; and market wages. Some will use a formal job points system that assigns a point value to each component of a job description. The point total for each position determines its place in the grade system. Job points systems are very time-consuming and expensive when done correctly. It is easier to use labor market comparisons to set rates and ranges.

Review your rate ranges at least every two years. There is no need to adjust your entire grade structure just because the relative values of one or two jobs have changed. You can always regrade a position or make changes to salary spreads within individual ranges. Competitive pressures, area wage fluctuations, or changes in job requirements may trigger range adjustments.

### *We don't have formal job descriptions. Do we need them?*

While it is not necessary to have job descriptions for your employees, these documents are helpful. Job descriptions can be used to inform employees about their responsibilities, guide supervisors when evaluating work distribution and departmental organization, and help determine appropriate pay grades and classifications. However, too many companies spend inordinate

amounts of time writing job descriptions, only to put them away on a shelf, never to be seen again. The most helpful job descriptions are living documents that are short and easy to understand, tied to company goals, reviewed regularly by both the employee and the company, and modified as needed.

When you write job descriptions, do not focus on the history of the job. Instead, think about the position as you want it to be, related to the current needs of the organization. Describe the position itself and not the individual in the position. Include:

- ◆ The job title
- ◆ A short, general summary of the job
- ◆ The title of the person the position reports to
- ◆ The departments the position interacts with
- ◆ The major responsibilities and job functions
- ◆ The minimum education and experience needed for the position

### *How do I set rates of pay?*

While pay grades promote internal equity, pay rates establish external competitiveness. The amount that you pay employees will be an important factor in determining whether they work for you or someone else. Businesses commonly start developing their rates of pay by looking at market rates, or what competitors pay for the same job. This is easiest to do for hourly, nonexempt positions. If you wish to hire a clerk and know that the other companies in your area or industry pay clerks between \$12.00 and \$13.00 per hour, you can decide to match that average or pay more or less, based on your compensation philosophy.

Using market rates for salaried, exempt positions is more complicated. It is often difficult to identify a “going rate” or even a narrow range of pay for key positions. If you are hiring a sales manager, you cannot accurately conclude that “sales managers earn \$80,000 a year because that is what XYZ Company pays.” You will usually factor individual experience, education, compensation history, and industry expertise into your analysis.

Include geographic differences in your market rate analysis, especially for salaried positions. According to the 2003 Geographic Salary Differentials Survey conducted by Mercer Human Resource Consulting, one position with an average salary of \$30,000 per year across the United States can command as little as \$26,820 in Little Rock, Arkansas, and as much as \$36,870 in San Francisco. Geographic differences also exist at higher salary levels, though they are not as striking. If you have multiple locations where the market rate varies greatly, you must allow for these differences and make adjustments either in base salary or otherwise when you move em-

ployees between locations. In a move from a lower to a higher market rate, there are creative ways to pay the employee more without raising base salary. For example, you can add a separate “cost-of-living allowance” to the worker’s paycheck. If this person subsequently moves back to the lower market rate area, you can cease the allowance without having to reduce salary. If the move is to a city where the rate is significantly lower, it is difficult to ask someone to take a pay cut, but you will want to achieve greater equity between this employee and new coworkers. You can attain this goal by taking away a benefit or perk to which other workers are entitled.

You can get wage market data from a variety of sources. The federal Bureau of Labor Statistics (BLS) compiles this information in a number of different formats. The Occupational Employment Statistics division of the BLS releases statistics broken down in a number of ways, including by state and metropolitan area. When looking at information for specific positions you may see reference to the “SOC” code. This is the Standard Occupational Classification System that the BLS uses to identify jobs.

Chambers of commerce and trade organizations produce market data through wage surveys, which they generally provide free or for a reasonable fee to members or companies that participate. You can also buy compensation surveys from a number of large national consulting firms. Web-based salary search tools such as [www.salary.com](http://www.salary.com) and [www.wageweb.com](http://www.wageweb.com) post free survey information, with more detailed data available for purchase. The big job posting boards publish salary information that is designed for use by the job seeker but can be used by anyone. The Web-based tools are generally not as comprehensive as the surveys produced by large consulting firms.

## Pay Increases

### *When should I give employees raises?*

Companies give raises on set dates in the year, anniversary dates, and employment milestones. The best timing for your company will depend on your philosophy, your budgeting process, your compensation system, and what your competitors in your geographic area are doing.

### *What criteria should I use to determine raises?*

*Merit Increases.* Merit increases are the most common form of pay raise. Many organizations tie the raise directly to performance evaluations, with a set percentage pegged to each performance rating. (See Chapter 3 on



**BETTER FORGOTTEN: “WHAT’S THIS EXTRA MONEY FOR?”**

An industry association required many levels of internal approval to authorize a salary increase. Commonly, employees first learned about their raises when they opened their paychecks to find a higher amount of pay. Communicate the timing and action taken on any raise.

performance management for a further discussion of rating tiers.) You may also choose to allocate a specific dollar amount or percentage for raises in each department and allow managers to determine the amount for each employee based on performance and contribution. This gives individual managers the discretion to give greater rewards to star performers as long as the total of all raises does not exceed the department’s budget.

Competitive forces have caused a sharp decline in the amount paid for merit increases. From the 1980s to the 1990s, average salary increases dropped from 7–10 percent to 3–4 percent. According to the Hewitt Associates 2003 U.S. Salary Increase Survey, the average merit increase for salaried exempt employees in 2003 was 3.4 percent, the lowest increase rate ever recorded by Hewitt. Employees sometimes incorrectly refer to these low increases as cost-of-living increases. Cost-of-living increases actually reflect the changes in the consumer price index compiled by the BLS and are more popular during periods of high inflation.

***How do merit increases work within the structure of my pay grade system?***

You have substantial flexibility with individuals who are at lower points in the pay grade. People who start out at the minimum for the rate range usually do so because they were promoted into the job or otherwise had little experience in the area. Good workers will improve rapidly as they gain experience, allowing you to move them up quickly within the range toward and eventually beyond the midpoint.

When an employee reaches or exceeds the maximum pay point of the grade, your choices become more difficult. You can opt to “cap” or “red circle” this person’s pay, and not to award further raises until you increase the salaries within the range, or the employee changes positions. Some companies that do not want to risk losing solid performers by freezing salaries will instead give them token raises or bump them to the next pay grade, if appropriate. The decision is entirely up to you and should be

based on the individual circumstances involved. You can apply the same principles when you demote employees because of performance or a restructuring and their salaries are above the maximum for their new grades.

***Does a promotion always involve a huge raise?***

Not unless the job is a true promotion and not a lateral move. A true promotion involves significant additional responsibilities and the elevation to a new pay grade, in which case you should increase the employee's salary to fall within the new range. If the promotion is such that it justifies a very large increase, you can split or stagger the increase over the subsequent months. Since a new position is probably a stretch for many people, they will have the time to get their feet wet and grow into their responsibilities. Giving a very large increase all at once can set unrealistic expectations for future increases.

**BETTER FORGOTTEN: "NEW SUIT? I GUESS YOU DON'T NEED A RAISE!"**

A young manager was overdue for an increase and anxiously awaiting corporate approval. A senior executive, well aware of this situation, complimented her on a new suit, adding that based on how well she dressed it was clear that she was well paid and did not need a raise. Personal comments have no place in salary discussions.

***Are merit increases the only way to give raises?***

*Pay for Performance.* A pay-for-performance system directly rewards individual productivity. Employees are given a specific set of objectives, with certain tasks to complete or certain outputs to achieve, and pay increases are based on how well they meet their objectives. While some people claim that pay for performance aptly rewards the best employees and fosters competition that improves performance standards, others say the emphasis on individual efforts hurts teamwork and overall productivity. Pay for performance has also been criticized because it does not take into account the influence of process, materials, or machinery or other factors beyond an employee's control that may impact attainment of goals. Since pay for performance can involve subjective standards, the system has also raised questions of bias.

Before implementing pay-for-performance raises, thoroughly research the parameters and communicate the ground rules to affected employees and their managers to avoid misunderstandings. As with any pay structure, there should be no mysteries.

*Raises for Single Rate Jobs.* If you have a few “single rate jobs,” where you are paying a number of people the same wage, it is often effective to give the same flat-dollar amount increase to all people in these positions on a set schedule. However, if you have a number of single rate jobs, it may serve you better in the long term to give increases as a percentage of the hourly rate, so that you don’t compress the differences between rates of pay overtime. If you decide to implement merit increases for single rate job employees, the criteria for individual increases should be very clear, communicated well to employees, and applied consistently.

*Across-the-Board Increases.* Across-the-board increases are raises given to all employees to deal with nontypical economic factors. You may, for instance, award this type of increase if you discover that your rates of pay are significantly lower than those of your competitors.

### ***What happens when employees complain about the system?***

No matter what pay and increase structure you choose, some people will be unhappy. But remember that there is no perfect method of compensation, and any approach will create problems. It is more important that you are comfortable that your approach fits in with your overall philosophy and that you communicate your system to the workforce.

In a common scenario, an employee will march into the manager’s office, announce that she was offered a new job, and request a substantial raise or ask that the employer make a counteroffer to get her to stay. Before automatically succumbing to this ploy, consider the entire situation. If she is at the low end of the rate range or the competitive rate has changed significantly, it may be reasonable to grant the increase. Sometimes it is better to refuse. Remember that she has already interviewed elsewhere and received a job offer. She may already have “emotionally resigned” and be more interested in the new position. Once you grant the raise, she may continue to use this tactic into the future.

Never let your salary structure drive a decision that does not seem to make sense. You can create a “special case” to meet market demand for a position or to acknowledge an individual’s unique or desirable background. Document these exceptions to show that the differences were not the result of any discriminatory motives.

**BETTER FORGOTTEN: “STAY PUT AND YOU’LL GET A BIGGER RAISE”**

A mid-level manager in a manufacturing facility was offered a transfer to the corporate office in a distant location, along with a larger salary as an incentive to make the move. He turned it down because he did not feel the raise was sufficient to relocate. Two months later, he received his regular merit increase, which brought his salary to a higher level than if he had accepted the transfer. When he asked why he had received more money by staying in the same job, he was told “it’s based upon the points in the system.” Don’t let a point system guide salary decisions if they don’t make sense.

***Why can’t we ever seem to keep salaries confidential?***

Despite publicized rules about the confidentiality of salary information and the general reluctance to share information, salary details inevitably seem to leak. Predictably, salary leaks create disgruntled employees, especially in circumstances where workers discover that a new employee performing the same or a similar job is being paid more than they are. When employees ask questions about perceived salary disparities, it is best to answer honestly. Without discussing specifics, you should explain that you are paying the higher rate because of market forces or the individual’s different work experience or educational background.

Often employees may only realize significant increases by changing jobs. But job changes can entail a loss of job security, seniority benefits, and general comfort level that comes with knowing your employer. Some of your employees will take that risk and others will not; it is inappropriate to adjust everyone’s salary every time you hire a new employee for more money.

***What about other compensation—what about those perks?***

Auto leasing, country club memberships, or clothing allowances may fit into your compensation philosophy and policy—that is your decision. Perks should be considered as part of the total compensation package. Before instituting any perks, survey eligible employees to determine whether they perceive value in what you plan to offer. Also consider that when you offer perks to only a selected group of employees, others may be resentful and morale may suffer.

## VARIABLE PAY: BONUSES AND INCENTIVES

Variable pay is different from base pay in that employees are not entitled to these payments but must continually earn them anew. Incentive structures are divided into two categories: short-term programs that reward behavior or performance over periods of a year or less, and long-term programs that foster attainment of goals over a number of years. Short-term programs are usually based on cash payments, while long-term incentives typically involve stock.

Tailor your organization's incentive program to your individual financial situation, business objectives, and employee demographics. Calculate the potential total cost before implementation, and if there is a possibility that you will be unable or unwilling to pay the bonuses earned, change the plan or do not implement it at all. A plan with a bad payment history is not a motivational tool. If you already have a plan with a poor reputation and you want to continue to pay bonuses or incentives, discontinue it and create a new one.

### *What are some of my bonus and incentive options?*

*Flat-Rate Bonuses.* The simplest and most common bonus is the flat dollar amount paid out once a year. This could be a holiday bonus; a special payment to recognize a company milestone or achievement above financial goals; or a payment under an annual bonus plan. Bonuses are generally given across the board or to specific categories of employees; they can include variable amounts based on criteria such as level of position or length of service, or payments as a percentage of the employee's base salary.

*Short-Term Bonuses.* Short-term bonuses are effective tools to recognize performance or spur improvement. Companies give these bonuses to reward achievements such as upselling, outstanding customer comments, measurable increases in production, quality improvements, or safety suggestions. These incentives have the biggest impact when you set a specific, short (usually one to three months) measurement window and tie awards to a publicized, companywide promotion. Continuing these plans indefinitely dulls their effectiveness, can result in poor monitoring, and may create the misimpression that the bonuses are a regular part of pay.

*Sales Incentives.* Sales incentives can range from payments of flat percentages of sales to more complex systems comprising factors such as lead generation and performance against a specific sales target or plan. Commissions are payments made as a percentage of sales and are usually paid out on a regular schedule shortly after the completion of the sale. Choose a schedule that

best fits your particular type of sales. If you sell a product with a high potential for returns or significant changes in the order before delivery, you may choose to “hold back” a portion of commissions until product acceptance. If you pay your salespeople on a commission-only basis, you may provide them a “draw” against a commission or incentive. Under this structure, you will deduct the amount of the draw from earned commissions or incentives prior to payout.

While your sales incentive structure should be driven by the results desired by the company rather than copied from a competitor, it is important to consider competitive factors as well. Give ample notice of any changes you make to payout or target amounts. Items to consider when designing a sales incentive plan include:

- ◆ How often will the plan pay out? Each pay period? Monthly? Quarterly?
- ◆ Who will maintain and review data concerning payout entitlements?
- ◆ Is the plan based on sales targets or total sales?
- ◆ If a plan is based on targets, what happens when employees exceed their targets?
- ◆ What incentives, if any, are paid if an employee leaves?
- ◆ Will there be holdbacks?
- ◆ How does the competition pay their salespeople?
- ◆ Will this plan reward individual performance, team sales, or both?
- ◆ What kind of records are salespeople required to keep?
- ◆ What time period does the plan cover?

*Goal-Based Bonus Plans.* Goal-based programs reward the achievement of company objectives, team performance, individual results, or a combination of the three. You can use individual payments as an award for successful completion of a project or for coming up with an outstanding cost-cutting suggestion. Company and team bonuses are typically paid for meeting financial, productivity, or cost-cutting objectives. Payouts under the plan can be a flat sum or based on a percentage of the profit made or the gain attained. When designing your program, carefully select those goals that are most important to your business, since eligible employees will naturally focus on performance that will help them earn the bonus. If your program provides annual payouts, enable eligible employees to track progress toward the goals throughout the year.

*Sign-On Bonuses.* The subject of sign-on bonuses is covered in Chapter 1, on recruitment.

*Retention Bonuses.* When a company goes through a merger, acquisition, or downsizing, employees begin to get nervous, lose focus, and leave for other employment, especially if they know that their jobs will be eliminated. Retention bonuses are predetermined amounts paid to those employees who continue in their jobs to a set date. They are valuable tools for keeping key employees during transition periods and other times of change and uncertainty.

### *Should we issue stock options?*

Stock options are a long-term incentive that gives the employee the right to purchase company stock in the future at the stock price on the date the options were granted. To exercise the right to purchase options, individuals must usually remain employed by the company for a specified period of time. Stock option plans are based on the theory that having options will encourage employees to produce more, so that share prices will increase and they can realize greater profits when they exercise their options and subsequently sell their stock. Options were the compensation form of choice for start-up companies that were short on cash but projected huge earnings.

#### **WORTH REPEATING: “NOW I KNOW WHAT THOSE OPTIONS ARE WORTH!”**

A consumer products company kept employees informed about the value of their options through very vivid graphics, such as posting a giant thermometer in the cafeteria showing increases in stock value. This generated excitement and enthusiasm at all levels about the stock option plan.

The dramatic changes in the stock market and the scandals surrounding accounting procedures and corporate accountability have caused many organizations to rethink their stock option plans. Some have turned to granting shares of restricted stock instead of or in addition to options. Although you may elect to grant stock options across the board, it is not fair to make options a major part of the compensation of all workers. These, and most other long-term schemes, should be geared toward executives and other key employees with greater control over the future direction of the company.

Stock-based incentives have significant tax consequences and complex legal requirements. Do not attempt to structure and implement a stock option plan without professional assistance.

***Now that I have decided which incentives to offer, how can I make the plans effective?***

How you administer the plan is just as important as the type of plan you choose. Employees must perceive that the plan is fair and provides value and incentive, and that the bonuses and incentives are paid as promised. These guidelines will help you:

- ✓ Document the plan in writing and distribute it to employees eligible to participate. The document should include the reasons the organization is offering the incentive; details such as timing, eligibility, and criteria for payouts; reasons for any variation in payouts; and whether amounts of payments will be capped. If the plan does not provide a specific end date, include a provision that the organization has the right to modify or terminate the plan at any time. The simpler the language, the better.
- ✓ Train the people responsible for administering the plan so that there is a single understanding of payment eligibilities and calculations. Also train the managers who will be making decisions about who will receive payouts and how much they will receive.
- ✓ Make payouts when promised under the plan, and plan your payouts to occur as soon as possible after the rewarded performance occurs.
- ✓ Evaluate the effectiveness of the plan on an ongoing basis. Analyze whether the incentive produced the intended results or improvements. Did it cause employee confusion or resentment? Were employees continually motivated or did they lose interest? Be prepared to change the programs to make them more effective, or develop new ones to help the organization attain new goals.

***Didn't you forget executive compensation?***

No, we left it out on purpose! Executive compensation is a term used to describe the special pay packages given to CEOs and senior management. These are limitless in variety, ever-changing, and have been subject to intense scrutiny, particularly in publicly held companies. Executive compensation should be structured by compensation experts, with assistance and administration by highly trusted investment professionals.



# Benefits

## What Makes a Benefits Package Competitive?

Deciding on an employee benefits package can be an intimidating process for any employer. First, there is a mind-boggling array of choices—HMO, PPO, LTD, EAP—and if the acronyms alone aren't confusing enough, when you add the problems of mounting costs and the demands of offering a competitive program, the pressures increase yet another notch.

Without minimizing the difficulty of wading through the options, we can tell you that it is possible to make intelligent and informed decisions that will help you to attract, retain, and improve the effectiveness of employees. This chapter covers the elements of an effective benefits process and explains ways to develop a comprehensive program that works for your organization.

### *What are employee benefits?*

Employee benefits are all benefits and services, other than wages, provided to employees by the employer. These include legally required social insurance programs, health and life-related insurance coverage, retirement plans, payment for time not worked, subsidized assistance, and any other program an organization may offer to help its workers.

### *Where do I begin?*

Begin by articulating your organization's benefits philosophy, similarly to how you developed a compensation philosophy as discussed in Chapter 6.

Using your benefits philosophy as a guidepost will enable you to make decisions that will fit your company's culture and overall business plan. Start by answering these questions:

- ◆ What level of benefits can you afford?
- ◆ Will you require employees to pay for all or a portion of the costs?
- ◆ How do you want your benefits to stack up against those offered by companies that compete for your employees?
- ◆ Will your benefits reward longevity and encourage retention or focus on short-term expectations?
- ◆ How will your benefits match the demographics of your workforce?
- ◆ Is it important for your organization to have benefits that encourage professional and/or personal growth?
- ◆ Are there specific or special benefits that you must offer because of senior management needs or the nature of your workforce?

### *What do employees look for in benefits?*

It depends on the age and family status of the employee. While a worker with health problems or with a family might place health insurance at the top of the list, a young or single employee may be more interested in the amount of vacation available. If you do not already know what your employees value, ask them!

## **LEGALLY REQUIRED INSURANCE PROGRAMS**

### *Are there minimum benefits that I have to provide?*

Yes, you are required by federal law to provide Social Security contributions, unemployment insurance, and workers compensation coverage. In some states, you must also provide additional benefits, such as short-term disability. In Hawaii, most employers are required to provide a specified level of health care coverage to employees. California legislation enacted in 2003 phases in employer health-coverage requirements over a number of years.

### **Social Security Benefits**

All nongovernment employers must contribute a designated percentage of each employee's pay toward Social Security, up to a maximum amount

determined periodically by the federal government. You are obligated to make Social Security payments whether a worker is full- or part-time, temporary or newly hired—although there are some very limited exemptions, such as foreign students working temporarily in the United States. While employees pay a percentage of their wages for Social Security, many do not realize this is also an employer-paid benefit. Let your employees know that you are making this contribution as part of their total benefits package. The Social Security Administration can provide a wealth of additional information to both employers and employees.

## Unemployment Insurance

Unemployment insurance was established by the federal government to provide individuals who are out of work through no fault of their own with temporary cash assistance to help tide them over while they actively look for work. Each state administers its own program under the federal guidelines. Employers are required to contribute a percentage of their payroll toward federal taxes under the Federal Unemployment Tax Act (FUTA) and toward state unemployment taxes. Your contribution rate will vary based on your claims experience—that is, the historical record of unemployment benefits charged.

Your state will determine both the size of the employer contribution and the duration and amount of the benefit paid to the employee. Employee benefits are generally based on a percentage of the employee's previous earnings, up to a state maximum. States will set payments for new employers at the industry average, an assigned rate, or the state average. Each state has its own timetables for reviewing unemployment claims experience and adjusting rates.

Employees who are terminated or laid off for a reason other than misconduct are typically entitled to unemployment benefits if they have worked for a minimum period designated by the state. Workers subjected to temporary layoffs or reductions in hours may also be eligible for payouts. While employees who voluntarily resign usually cannot collect benefits, some states make exceptions for people who leave their jobs under extenuating circumstances, such as to relocate to care for a sick family member. (For a discussion of the circumstances under which terminated employees are eligible for unemployment benefits and how you can contest claims, see Chapter 10). When you receive any requests for information from your local unemployment office, it is important that you respond in a timely manner, because you can incur considerable fines for missed deadlines.

You can reduce your unemployment tax rate by contesting appropriate claims and monitoring terminations. There are service providers, often af-

filiated with payroll service companies, that work with employers at reasonable cost to respond to unemployment claims and reduce or stabilize contribution rates. When selecting a provider, the size of the organization is less important than its unemployment claims processing knowledge and experience with the systems and procedures of your local unemployment offices.

## Workers Compensation

*Why do I have to worry about workers compensation since no one gets hurt in an office?*

Workers compensation is a state-governed benefits scheme that requires employers to pay medical bills and partial lost wages that result from work-related injuries and illnesses. It is also a no-fault system that quantifies the extent of any permanent partial disability resulting from an injury or illness and provides monetary payments to the employee proportionate to the disability. Some employers purchase private workers compensation insurance, while others self-fund—meaning they pay their own claims. Self-insurance arrangements are typically administered by insurance companies or other third parties. Twenty states have their own workers compensation funds, to which some states mandate employer contributions. The cost of workers compensation insurance is based on the risk level of the industry and the claims history of the employer.

Too many employers accept high workers compensation premiums as a necessary evil, rather than working actively to monitor claims and rein in costs. You can dramatically reduce the risk of employee exposure to injury or illness through an active safety program. Work-related injuries are not confined to traditional manufacturing environments. Workers compensation costs have skyrocketed in all industries because of increased medical costs and rising claims connected with stress-related illnesses, repetitive motion injuries, and back problems. Work with your workers compensation carrier or state fund to identify potential hazards in your workplace, then take action and provide training to reduce these risks.

Also, work with your carrier to reduce costs by actively reviewing claims. Ask your carrier to explain the way it processes claims and charges reserves and expenses. Find out if your state laws permit you to request second opinions for medical care or to designate a provider or network of doctors for covered injuries and illnesses. These methods will allow you to obtain more information about the course of treatment and avoid or contest spurious claims.

Keep in touch with your employees when they are out of work because of work-related injuries or illnesses. Regular contact will maintain their connection with the workplace, show that you care, and speed their return to work. Many employers make efforts to get employees back to work as soon as possible, even if they cannot yet return to their regular jobs. Providing employees with “light duty,” “restricted duty,” or “transitional duty” assignments can be very cost-effective. You will save on lost wage payments and aid workers in a rapid transition back to their regular jobs.

### ***Do I need a broker?***

Most employers purchase insurance benefits coverage and retirement plan services through a broker. Brokers can offer a good perspective on the range of plans available and help you choose appropriate options for your company. If you do not have your own internal benefits staff, a broker can provide much-needed assistance as a liaison with your carriers. You probably already use a broker for other types of business insurance; this person or company may or may not be appropriate for your benefits needs. Benefits brokers earn commissions from the benefit carriers and may charge additional fees for some services. A good broker will design programs to meet client needs regardless of commission structure.

Take the time to interview a number of brokers, asking them specifically about their experience in the applicable benefits area. Obtain competitive proposals to learn more about available options and select the best broker for your needs. When you ask for a competing quote, tell the broker that you are also obtaining quotes through another broker. You do not want multiple brokers contacting the same insurance providers on your behalf. The insurance carriers will request employee census information that includes data such as age, zip code, gender, and occupation, without names. An underwriter will then analyze the employee census data and any available claims history, assess the risk profile of your group, and quote rates.

## **BENEFITS THAT PROVIDE ECONOMIC SECURITY**

Economic security benefits provide payments to employees and/or their families in the event that the employee dies or otherwise becomes unable to work.

### **Group Life Insurance**

Life insurance is relatively inexpensive, but it offers employees and their loved ones a great deal of security. If an employee dies, the group policy

pays a flat dollar amount to a designated beneficiary. The amount of the payment can be tied to the employee's position, annual salary, or a multiple of the annual salary, with a cap or maximum payout. Your premiums will be calculated based on the total dollar amount of coverage, the ages of your individual participants, or a rate determined from a census of the entire group. Unlike individual life insurance policies, most group plans require minimal or no prescreening to identify high-risk medical conditions. If your plan has prescreening requirements or limitations on benefits payouts, communicate these factors to your workforce.

***Do I have to worry about taxes and discrimination when I provide group term life insurance?***

If you pay for more than a specified amount of life insurance for employees, the IRS considers the value of the extra coverage to be a taxable benefit. Your accountant or payroll provider can perform this calculation. Ask also about rules to ensure that employers do not limit life insurance benefits to older, more highly compensated employees.

***What about the employee who wants more life insurance?***

Supplemental or optional life insurance is a popular voluntary benefit, providing employees a convenient way to purchase additional coverage at their own expense. Coverage is usually available in multiples of the employee's salary, up to a maximum amount. Employees may also be able to purchase limited life insurance coverage for a spouse or child. Individuals wishing to purchase supplemental benefits may be required to submit medical evidence of insurability, especially for higher levels of coverage. Your administrative responsibilities regarding supplemental policies will be the same as those for your regular group plan.

## **AD&D Coverage**

Group life insurance is often coupled with accidental death and dismemberment (AD&D) coverage that pays an additional benefit after an accidental death or the loss of a limb or eyesight. AD&D benefits are less expensive than life insurance, but they are not a substitute for basic life insurance benefits.

When problems arise under life or AD&D policies, more often than not they involve disputes as to the proper beneficiary. To avoid potential headaches, maintain up-to-date, signed records of employee beneficiary designations. It is good practice to ask employees to complete new benefi-

ciary forms on a regular basis, perhaps annually or during open enrollment, and to replace the old forms with the new ones in your files. If you have employees who are out on disability leave, your insurer will probably waive life or AD&D premiums during the disability period, but will only continue coverage if you provide notice of the employees' extended absence. Consult with your insurance carrier to determine whether state laws require you to offer terminated employees the opportunity to convert their group coverage into individual policies.

## Disability Insurance

### *Should I consider a disability plan?*

Employees up to age 65 are statistically more likely to lose income due to extended absences. Short-term disability (STD) and long-term disability (LTD) insurance pay covered employees a percentage of their earnings when they are unable to work because of an illness or injury.

STD plans pay a percentage of the employee's weekly earnings for a fixed period of up to twelve months. The average policy limits coverage to six months. Employees are usually required to satisfy a brief waiting period before payments begin. Average payments range from 50 percent to 67 percent of earnings; more generous benefits could create an incentive for the employee to stay out of work. Some states require a minimum STD benefit level. Your STD policy should clearly define the word *disability*, meet applicable state requirements, and cover disabilities arising from pregnancy in the same way as other disabilities.

LTD coverage replaces a percentage of income in more extreme situations, when the employee is unable to work for extended periods. When you offer STD coverage, LTD will kick in after STD insurance runs out. Where there is no prior STD coverage, waiting periods for LTD can range from three to twelve months, or longer in situations involving preexisting conditions. Benefits are usually set at about 60 percent of the employee's base salary, with a plan maximum, either for a specified number of months or until the employee turns age 65 or 70. The definition of a disability under LTD plans is generally more stringent than under STD plans. An LTD policy may limit benefits to people unable to perform any type of work at all.

Rates for both STD and LTD policies are based on your claims experience, but some companies choose to fund their own STD plans. Many organizations share the plan cost by requiring an employee contribution. You can help to control costs by requiring employees to use accrued sick

and vacation time before receiving disability benefits, and by reducing disability payments by amounts that the employee receives from Social Security or other sources. You can also contain expenses through an active return-to-work program, similar to the “light duty” plans described previously in the workers compensation section.

Alternatively, consider offering voluntary LTD plans, through which employees have the opportunity to purchase individual policies at attractive group rates through payroll deductions. Voluntary plans provide easy access to LTD for employees and portability if they leave the company. On the downside, these programs usually require a minimum percentage of employee participation that can be difficult to reach and maintain. If you offer voluntary LTD benefits, you will have to continually communicate the benefits to employees if you expect them to participate.

**BETTER FORGOTTEN: “THEY DON’T OFFER THAT OPTION AT MY LOCATION!”**

A national, multilocation employer found out that some facilities were offering their own voluntary benefits options because employees had requested them. Providing certain voluntary benefits in only some locations may be appropriate, but only if it fits into your benefits philosophy. Central coordination of benefits can save employees money, because the company can negotiate lower rates through national contracts.

***Who’s going to pay for the nursing home?***

With the aging of the employee population and the availability of life-extending treatments and new options for care, long-term care (LTC) insurance has received increased publicity. LTC insurance is designed to cover the costs of care in nursing homes, assisted living facilities, adult day care, or someone’s own home. LTC is typically offered as a voluntary benefit, with employees paying all premiums. It is relatively expensive and complex, and therefore requires very good communication in order to be successful and reach typical participation rates of 6 percent to 15 percent. While LTC options are more prevalent at large employers, increased awareness and the availability of a variety of policies make it a benefit worth exploring for employers of all sizes. Smaller companies may be able to participate through trade groups or industry associations.



## BENEFIT DAYS: HOLIDAYS, SICK DAYS, AND VACATION

*I know Scrooge gave Bob Cratchit Christmas off, but do I have to?*

Ebenezer Scrooge did not have to give Christmas Day off in London in the 1800s, and if you are a private employer, you are not legally required to recognize holidays, sick days (with the exception of workers compensation and short-term disability, where required by state law), personal days, or vacation time. But you will likely find yourself with an unfortunate recruitment and retention problem if you do not offer some type of time-off arrangement. Return to your benefits philosophy and once again use it as a guidepost when devising a policy on benefit days that works for your organization.

*Holidays.* While public employers are required to give workers certain holidays off, private employers can devise their own holiday schedules. Your schedule will likely be influenced by your business cycle, industry standards, and practices in your geographic area. Start by deciding how many annual holidays you want to offer employees. Some employers set a fixed list of days on which their facilities will close, or they issue a new holiday schedule each year. Or you may opt for a shorter fixed list and set aside a given number of days as “floating” holidays that workers may use as desired. Floating holidays are an easy way to accommodate diverse religious and cultural observances. Some of the other questions to consider are:

- ◆ Will I pay a premium to employees who work on designated holidays?
- ◆ What alternative day will I give when the holiday falls on a non-working day?
- ◆ Are new employees eligible for paid holidays immediately, or will there be a waiting period?
- ◆ Will I offer part-time employees full or prorated holiday benefits?

*Vacation Days.* Employers typically encourage, or even require, employees to take vacation. Studies show that employees return from vacations rested, recharged, and ready to work. The two most important factors in a vacation policy are how much paid vacation time you will give employees, and how the days are earned. You may elect to give all employees the same

amount of vacation, to provide different benefits to exempt and nonexempt workers, or to offer more time to officers and executives. Most organizations provide increased vacation benefits as an employee's seniority grows.

You set the standard by which employees earn, or accrue, vacation time. If your policy allows twelve paid vacation days per year, you might decide that workers will earn one day per month. You may also set a waiting period, or a certain amount of time that employees must work for your company before they can earn or take vacation. You are permitted to place restrictions on employee use of vacation time. You can require advance notice for vacation scheduling or "blackout" dates during which employees cannot take vacation because of high business demand. You can set rules as to whether vacation can be taken in single days as well as multiple-day blocks. You may limit the number of unused vacation days an employee can carry over to the next year.

Most problems with vacation policies arise when an employee leaves the company and there is a dispute over the amount of accrued, unused vacation time that the employer must pay. To avoid misunderstandings, prepare and communicate a written vacation policy that clearly explains the rules, especially concerning eligibility, accrual, and carryover limitations. Institute an accurate tracking system; most HRIS software programs have vacation and sick time tracking features.

**WORTH REPEATING: "THANKS FOR MAKING THAT CLEAR!"**

A larger company purchased a multilocation service employer that had a significantly different vacation policy. The company transitioned employees to its vacation policy gradually, and affected employees were given written statements showing their own vacation benefits.

*Sick Days.* The concepts and considerations for establishing sick days are similar to those for paid vacation; you determine eligibility, accrual rate, and whether you will allow carryover. Some employers allow workers to take sick time in partial-day increments to cover doctor's appointments and medical tests. Many employers are reluctant to give employees sick days because they believe that they will take the time off whether or not they are sick. You can minimize the potential for misuse by paying workers for

unused days at the end of a calendar quarter or year. Some companies retain unused sick days in a bank of “hospital days,” to provide paid days for hospital stays or other disability situations.

### *Is it better just to switch to a paid time-off policy?*

A growing number of employers are moving away from separating sick, vacation, personal, and floating holiday time and are instead substituting a single bank of days called “paid time off” (PTO). Under the PTO concept, a business gives employees a specified number of paid days or hours to use however they wish, as long as they provide sufficient notice for planned absences. With PTO, employers no longer have to wonder if that employee who called in sick is really going to a weekday theater matinee. The reasons for absences do not matter.

PTO can discourage absenteeism. Instead of employees feeling that they have to use sick days or lose them, they can accumulate days to use for vacation or other pursuits. The system creates equity between those employees who traditionally use all of their sick time and those who rarely use it. PTO also simplifies administrative record keeping, eliminating the need to track reasons for absences.

When creating a PTO policy, consider what types of absences you will include in your PTO bank; how many days off you will make available; whether you will differentiate between levels of employees or full- and part-time workers; how time will accrue; notice expectations for scheduled leave requests; and whether you will allow carryover or will pay out unused days at the end of the year. You will also need to determine how PTO will interact with other paid and unpaid leave, such as disability and leave without pay under the Family and Medical Leave Act (FMLA). Since PTO does not distinguish between vacation time and other types of leave, depending on your state termination laws, you may be required to pay employees for earned, unused PTO at the time of termination. If you are shifting from a traditional days off program to PTO, develop a transition plan regarding unused days under the old system. It may take some initial effort to explain and sell the change to your employees, but most employees ultimately prefer the added flexibility of PTO.

## HEALTH INSURANCE

Health care will undoubtedly be your largest employee benefit expenditure, costing on average from 10 percent to 15 percent of payroll. Costs are continuing to rise at a staggering pace, and the situation is unlikely to change. It is impossible to miss the front-page news stories that describe

aging baby boomers, soaring prescription drug use, sophisticated and costly medical procedures, and fraud as key contributors to a cost structure that seems out of control. According to a 2003 study conducted by the Employment Policy Foundation, the annual employer share of health benefit costs could be *as high as \$11,000 per employee by 2010*.

While it is easy to fixate on health insurance costs, it is critical to remember that health benefits are a key tool for recruitment and retention. You will want to take the time to find a plan that both fits within your budget and meets employee needs. There are numerous types of plans available from a variety of different sources. The key to finding a program that will work for your organization is understanding your real needs and shopping smartly.

### ***Are there legal requirements for offering health benefits?***

As of the writing of this book, only Hawaii and California require private employers to offer health benefits. But once you provide benefits, your plan may be subject to state coverage and notice requirements. Many states have specific laws ranging from maximum copays for prescription drugs to parity for mental health coverage to minimum hospital stays after childbirth. If you have operations in several different states, you can vary your coverage by state. In addition, all group health plans are covered by the federal Women's Health and Cancer Rights Act of 1998, which provides mandatory coverage for women who choose to have breast reconstruction connected with a mastectomy. You can obtain more information about federal and state health insurance laws from your broker or carrier.

### ***Where do I begin looking for a health care plan?***

You may want to start with a broker. A broker will be able to present you with a range of options, provide clout when dealing with a larger insurance carrier, and give you leverage with claims issues once you sign on with a provider. Or you may want to contact carriers directly. Some insurance providers, particularly local managed care programs, prefer to avoid paying brokers' commissions and work with the employer. Alternatively, many small employers purchase coverage at attractive prices through trade associations, chambers of commerce, or state-supported plans. Your state department of health can help you identify state resources.

### ***What factors will influence the cost of the plan?***

Your coverage costs will generally depend on the number of covered employees, whether they elect single or family coverage, and the level of

**BETTER FORGOTTEN: “WHEN DID THAT EMPLOYEE TERMINATE?”**

A large food service company with high turnover did not always notify carriers promptly of terminations and was, consequently, often charged for several extra months, or even years, amounting to thousands of dollars in additional premiums. The insurance company refused to provide a credit for these payments. Set up and maintain a good system for promptly notifying all benefits carriers of terminations.

benefits selected. Insurance companies will set their rates based on community ratings (i.e., the claims experience of a specific group or geographic area), or the organization’s individual claims experience, or a blended rate. A community rating that spreads the risk will usually provide savings for small employers. If your employee population is “young and healthy” and does not incur large claims, an experience rating could work in your favor. You do not have a choice on how a particular plan is rated, but rating could be one factor in your decision among providers. The higher the level of benefit, the more your plan will cost. Including a prescription plan, coverage for in vitro fertilization, and vision care will all add cost. If you join a group plan through your chamber of commerce or industry association, you will have a smaller range of benefit level choices than if you establish your own company plan.

You can fully insure or self-insure your plan. Under a fully insured plan, you pay premiums to the insurance company that cover all expenses incurred by the group. Your carrier adjusts your premiums annually, depending on the claims experience of the group. Under a self-insured plan, you pay all of the costs of health care, an administration fee, and purchase stop-loss insurance to cover very large claims. Self-funding your plan may save you money and, depending on the laws of your state, exempt your plan from certain insurance requirements, but the approach also involves more risk. Larger companies are more likely to self-insure because they are better able to absorb the risk. Other funding options may be available. Make sure you understand the specifics of your costs and potential risks.

***What type of health plan do I choose?***

Before making a decision, understand the different types of plans available.

◆ *Indemnity Plans.* Thirty years ago, most employees with employer-sponsored health benefits went to the doctor, paid the bill, and then

brought the receipt with a claim form to someone at work, who checked to make sure that all of the boxes were filled. The employer then sent the paperwork to an insurance company, which sent a check to the employee a few weeks later covering a percentage of the cost, typically 80 percent. There were low—or no—deductibles, and employees did not contribute toward the cost of this coverage. Employees visited any doctor they wanted and made their own decisions about when to visit a specialist.

This traditional indemnity plan sounds like science fiction today. Over the years, both insurance carriers and employers have made major changes to control costs. Some changes were administrative. Now employees send claims directly to insurance companies for processing. Others affected the delivery of care, such as requiring precertification before all nonemergency surgery and medical management for chronic illness. Employees assumed increased deductibles and copayments, with caps on maximum insurance payouts. Insurers began to limit reimbursements to a percentage of “usual and customary rates” to discourage the use of high-fee providers. Yet all of these changes failed to reduce the annual double-digit percentage increases in employer costs. Indemnity plans are still in use today, but many employers choose alternative arrangements.

◆ *Health Maintenance Organizations (HMOs)*. The HMO model is designed to cover a wide range of care and minimize out-of-pocket expenses by requiring that participants use specified providers for all medical services. An HMO may operate in a clinic-like setting, where all of the providers are HMO employees, or it may provide participants with a list of providers in multiple locations that have contracted with the HMO to provide care at set rates. Under most HMO systems, a patient needs a referral from the primary care physician before seeing a specialist; hospital stays must be preapproved and are limited to in-network hospitals; and prescriptions are filled at designated pharmacies for preferred medications. The payout cap is usually high, with low employee copayment levels. These tight restrictions help to control and predict health care costs but severely limit options, especially for higher-paid employees who traditionally prefer to choose their own doctors.

◆ *Preferred Provider Organizations (PPOs)*. The PPO combines the HMO model with the features of an indemnity system to provide more options for employers and employees alike. Under a PPO, participants can either seek care from doctors in the PPO network or choose their own out-of-network care providers. To encourage use of in-network services, PPOs will typically require employees to pay a large deductible and make significantly higher copayments for out-of-network services. PPO plans cost

more than HMOs, but they can be attractive for a diverse workforce, offering a range of benefit levels and provider options and allowing employees to set their priorities. Another variant of a PPO is a Point of Service plan (POS), which provides in-network discounts only if all services are directed in-network. For example, if a participant chooses an out-of-network provider, even if that provider directs him to an in-network hospital, he will not be eligible for in-network discounts.

◆ *Defined Contribution Health Plans.* “Defined contribution,” “consumer directed,” “self-directed,” and “consumer driven” are all names used for the newest form of health benefits coverage. There are many variations on this concept, but under the general model, the employer deposits an annual, pretax “defined contribution” of at least \$2,000 into the health care account of each participating employee and purchases a catastrophic health insurance plan for the worker. Employees do not contribute to the account. When workers incur medical expenses, they draw reimbursements from the account, up to the limit of the account. Unused funds can be carried over to the next year and combined with the company’s new contribution, up to an account maximum. If employees exceed their account limits, the catastrophic insurance policy will provide coverage, usually after satisfaction of a high per-person deductible.

The defined contribution plan is predicated on the idea that employees will view the account as their own money and will therefore be more likely to regulate their spending. Self-regulation works best among a sophisticated employee population, and it is not recommended as the only coverage option.

### ***Should I offer dental and vision care benefits?***

More employers than ever are offering dental benefits. Dental costs have remained relatively stable and insurance is widely available through indemnity coverage, PPOs, dental maintenance organizations, and national plans. Make sure that any network plan you are considering offers a good selection of dentists in your area. Dental plans are typically weighted toward preventive care and limit annual per-person reimbursements to about \$1,000 or \$1,500. While coverage for orthodontics is popular, you can limit eligibility to employees or children, or mandate the use of in-network providers to control costs. You can position your dental plan as a benefit separate from the medical plan, allowing employees to choose whether they want to elect coverage under medical, dental, or both.

Vision care is another popular health benefit offered through many HMOs, some PPOs, and a few national companies that maintain extensive networks of providers for eye exams, glasses, and contact lenses at either fixed or discounted rates. While these plans are easy to administer and do

**BETTER FORGOTTEN: “WHY SHOULD I CHANGE IF IT DOES NOT COST ME MORE?”**

A midsize employer offered HMO and PPO options, but wanted to encourage more employees to select the HMO. Prior to open enrollment, the company decreased the benefits in the PPO, but forgot to increase the employee contribution rate, leaving a minimal cost differential between the two plans. As a result, even though the HMO plan now offered more attractive benefits, most employees did not switch plans. Many employees do not fully understand the distinctions between plans. If you want to encourage participation in a particular program, make the price for that program *significantly* more attractive than other options.

not cost much, many companies offer vision care as an optional benefit, with employees paying all or part of the cost. Those that choose the benefit are more likely to take advantage of the coverage. National retail eye care chains also promote employer discount plans, so you can offer discounts to your employees without providing a vision benefit plan.

***Our city government provides insurance coverage for domestic partners. Do I have to?***

No. Private employers that offer domestic partner coverage do so not for legal reasons, but for philosophical or competitive ones. Domestic partner provisions can cover same-sex and heterosexual partners and require some form of recognized registration or proof of an ongoing relationship. Numerous studies have shown that the inclusion of domestic partner benefits has not caused cost increases.

***How do I make my final decision?***

Your decision will be based on a number of factors. There are your employee needs based on age, family, and income demographics. There are competitive needs, driven by the types of packages your industry and local competitors offer. Too many small companies design their plans around the needs of an owner or senior manager, which results in a higher-cost plan with fewer employee options. If the boss wants a plan that covers 100 percent of his Freudian analysis, look into purchasing an executive benefit



plan. Executive plans can save money over providing costly benefits to an entire group.

In addition to looking at the cost and benefit levels of specific plans, ask what services are included. Are there online solutions for billing and enrollment questions? Do customer service representatives speak languages other than English? Who will handle company questions and concerns? Can employees make benefit or enrollment changes on the telephone or online? One important measure of service is whether the carrier has a claims committee to objectively review denied claims. Finally, check the carrier's financial stability through a private, state, or local rating service.

You do not have to offer only one health plan option for employees. Offering differing plans, perhaps an HMO alongside a PPO, can meet different needs and potentially save costs over the long term.

***My insurance company is raising my rates. Should I change carriers?***

Not necessarily. Annual changes in health benefits carriers, levels of coverage, or employee contributions are quite common, but do not make this decision casually. When you change HMOs or other network plans, your employees may have to change most or all of their doctors. While you should not hesitate to change your plan if you and your employees are getting bad service, if your motivation is cost, first look at what you can do within your current plan to control your costs.

If your current copayment level for office visits is low, consider raising it. Higher copays reduce costs, give employees a greater understanding of the cost of care, and provide an incentive to limit doctor visits. You can also increase employee copayments for prescription medicine or offer preferential reimbursements for generic drugs. You may need to raise the rate of employee contribution. Employers generally require employees to pay from 20 percent to 40 percent of employer medical costs through payroll deductions. Many small employers pay for individual coverage but require an employee to pay the entire additional cost for family coverage. Contribution rates can be calculated as a percentage of total cost, a flat dollar amount, or as a percentage of earnings. Some companies steer employees to lower-cost plans by dramatically increasing the employee contribution rates required for the more expensive plans. Also consider reducing or removing certain benefits, or increasing the eligibility waiting period for new employees.

Employees are likely to gripe when you ask them to make any extra payments or contributions, so it is important that you explain to them the big picture. They will be less likely to complain about paying \$25 for an office visit if they are reminded that your plan will cover many thousands of dollars in expenses should they require major surgery and hospitalization.

Single employees who feel that the \$80 a month you deduct for coverage is outrageous probably have no idea that you are paying 80 percent of the cost. Preparing and distributing a breakdown of total cost and respective employer and employee contributions will help illustrate the magnitude of the figures involved.

**WORTH REPEATING: “THANKS FOR CHECKING MY BLOOD PRESSURE!”**

Many employers host annual health benefit fairs. They invite representatives from their carriers, provide information on health issues, and encourage attendance with free blood pressure and cholesterol screening tests. Employees have fun, get information, and understand that the company cares about their health.

***Is it true that I am obligated to insure employees after they leave the company?***

Yes, if you have twenty or more employees, you are covered under the terms of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). COBRA requirements are discussed in detail in Chapter 10 on termination. COBRA mandates extensive employer notice and record-keeping responsibilities, but you can ease your administrative burden and minimize the risk of costly violations at minimal cost by hiring an outside COBRA administrator. The administrator keeps track of sending notification letters, billing former employees, and communicating with benefits carriers. Companies offering COBRA administration services include insurance carriers, payroll companies, and independent service providers. Choose an administrator that meets your communication and record-keeping needs; do not compromise your requirements to fit in with a third party's system.

***How do the new medical privacy laws affect our company?***

In 2003, the Department of Health and Human Services finalized new regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), giving patients broad protections over the privacy of their medical records. HIPAA rules are designed to control the use and disclosure of certain defined, protected health information (PHI). Under the rules, patients must give specific authorization before health plans, doc-

tors, pharmacies, or other covered parties can release PHI in most nonroutine circumstances. “Nonroutine circumstances” include the release of information to an employer. The rules also require that group health plans obtain employees’ specific consent before their PHI is used for marketing purposes.

HIPAA laws are very complex, and since they are relatively new, the full ramifications of the law on employers have yet to be determined. In general, since it is the health plan, and not the employer, that is covered under the HIPAA rules, if you are not in a health care–related business, your most important consideration will be continuing to protect the privacy of employee medical records in your possession. Examine the flow of employee medical information in your organization (i.e., how the company obtains information, how much and what kind of data is normally received, and where the data goes once it’s received). Ask yourself whether the company has a legitimate need for the level of information received and whether there are safeguards in place for preventing improper access to the information. Keep medical records confidential and separate from other employment records, and limit access to this data to those employees with a need to know.

### ***What is a cafeteria plan?***

A cafeteria plan allows employees to choose from a selection or “menu” of two or more employer-provided benefits and to make contributions toward these benefits in pretax dollars, thereby reducing the amount of their taxable earnings. Cafeteria plans, adopted under Section 125 of the Internal Revenue Code, are also known as Section 125 plans. Without a cafeteria plan, employees make payments toward their benefit plans on an after-tax basis. With a Section 125 plan, employees must sign an acknowledgment that their contributions are being made as pretax dollars. Benefits that qualify for inclusion in a cafeteria plan include accident and health insurance, group term life insurance, dependent care assistance, elective 401(k) plan contributions, elective vacation days, and flexible spending accounts. A cafeteria plan provides tax benefits for employers as well. Check with an accountant to see whether this is a viable alternative for your company.

### ***Is a cafeteria plan the same as a flexible spending account?***

No, but a flexible spending account (FSA) is another way to offer employees a potentially valuable tax-exempt arrangement. Under an FSA, employees can set aside pretax dollars, up to a designated maximum, into an account to cover health or dependent care costs. As employees incur eligi-

ble costs, they submit proof of payment to the administrator and receive reimbursements from the account. Medical savings accounts reimburse expenses such as insurance deductibles, coinsurance payments, and other health-related payments that are not covered under the regular medical insurance plan. Dependent care accounts reimburse expenses for child and dependent care (including parents) for licensed day care, legal home care, preschools, camps, and before- and after-school programs. You can establish FSA arrangements internally or through an administrator, with the employer paying the administrative fee for worker accounts.

Employees must elect to fund their FSAs at the beginning of the plan year, and at the end of the year, they forfeit any money they do not spend. Therefore, workers should take a conservative approach in estimating their expenses. This is a great benefit for employees who understand how medical and dependent care expenses can add up and are interested in reducing their taxable income.

## EMPLOYEE ASSISTANCE PROGRAMS

### *What can I expect from an employee assistance program?*

An employee assistance program (EAP) helps employees handle nonwork-related problems that can interfere with their performance on the job. The first EAPs targeted alcohol and substance abuse problems, but the plans have subsequently evolved into “broad brush” programs that respond to a wide range of issues, from domestic violence to aging parents. Under an EAP system, employees can confidentially contact a third party for assistance. The EAP will either provide short-term telephone or in-person counseling or refer the employee elsewhere for help.

An EAP can offer employees referrals that the employer would otherwise lack the expertise to provide. A good EAP will also advise an employer and its managers how to identify and properly handle employees who show signs of problems such as domestic violence or alcohol or substance abuse. EAP providers can be large or small, local or national. Select one that matches your style and philosophy, that provides service your employees will find accessible, and that will train your managers to refer appropriate employees to the program.

## RETIREMENT BENEFITS

### *What is the difference between a pension plan and a 401(k) plan?*

Employer-sponsored retirement plans can be divided into two types: defined benefit and defined contribution plans. Defined benefit plans are the

traditional pension plans. Employers make 100 percent of the contributions toward these plans and, upon retirement, employees receive a specific monthly benefit. The benefit can be a flat amount or it may be based on a formula including age, earnings, and years of service. The plan is funded through employer contributions and investment of plan assets. Defined benefit plans are common in the public sector and in large companies, especially those with long-standing union contracts.

Defined contribution plans provide an individual account for each participant, and the value of each account is usually based largely on the dollar amount contributed by the individual, although there will also be investment gains or losses.

Because defined benefit plans are increasingly costly and burdensome to administer, and defined contribution plans allow employees to check and manage their own accounts, most employers are offering defined contribution plans. The 401(k) plan is the most popular of these vehicles.

## 401(k) Plans

### *What is a 401(k) plan and how do I set one up?*

A 401(k) plan is an employer-sponsored plan that helps workers save money for their retirement. Employees can put an elective amount, usually up to 15 percent of their annual earnings, into a retirement savings account on a pretax basis, up to a maximum set by the IRS each year. Employees age 50 or older may contribute at a higher level. Not all plans require employers to contribute, but most provide that employers either match or contribute a percentage of the employee contribution. All contributions are given to a third-party administrator who invests the funds as the employee directs. If employees withdraw their money before they reach age 59.5, they have to pay tax on it, plus a 10 percent fine to the IRS. However, if allowed under the plan, individuals can take loans against their accounts and can always take a hardship withdrawal under specific situations defined by the IRS.

Because they offer many advantages, 401(k) plans are hugely popular. Employees like to be able to make decisions about and watch their investments. They appreciate the convenience of payroll savings, the opportunity to save pretax dollars at much higher levels than IRAs, and the “free money” benefit of employer contributions. When employees switch jobs, they can roll over their funds to their new employer’s 401(k) or other qualified retirement plan. A qualified plan is one that meets all of the re-

quirements of the IRS for favorable tax status. Employers save money, too, because they can fund contributions with pretax dollars.

Your provider may be an insurance carrier, an investment company, or a third-party administrator. When setting up a new 401(k) plan, do not assume that all plan providers are the same. Administrative services, fees, and investment options vary. In all cases, you will want to investigate and ask the following questions:

- ◆ What fees are assessed, and are they charged to the plan or deducted from plan earnings?
- ◆ What services does the plan offer, and is there an additional charge for services? For example, you have an obligation to your employees to educate them about your 401(k) offering. Will the provider help you educate employees? Will it provide materials to communicate the plan details?
- ◆ What types of investment options does the provider offer? You have a fiduciary responsibility to provide a variety of investment options, not just your company stock and one or two others. Investments should cover the gamut, from conservative to higher-risk investment choices.
- ◆ What are the customer service offerings? Can employees contact the provider directly, by phone or over the Internet, to change investment options or ask questions?
- ◆ How often can employees change their investments?

If you are changing 401(k) providers or making fund changes, find out if there will be a blackout period during which participants cannot access their accounts. Also, identify how money will be moved from funds that are no longer offered into new options. Ask for changes that are most favorable to your employees and communicate these details.

When setting up your 401(k) plan, decide which employees are eligible to participate in the plan and whether you will require a waiting period for new employees before they are eligible to contribute. All 401(k) plans are governed by strict ERISA rules designed to ensure that the plan is fair to all employees and that it is not “top heavy”—that is, it does not favor highly compensated individuals. You must run an annual nondiscrimination test to ensure that lower-level employees as well as key employees are taking advantage of the plan. If the plan does not pass the discrimination test, you must take steps to correct the problem or return plan funds to the highly compensated employees, who will then have to pay income tax

**WORTH REPEATING: SEND A LETTER HOME**

A midsize employer in a big city sends out letters to employees' homes in advance of each open enrollment period. One letter notifies active 401(k) plan participants of any plan changes, explaining the administrative tools and information resources they have available to them under the plan. Another letter encourages eligible employees to sign up if they are not participating, and a third letter congratulates newly eligible employees and outlines the plan.

on these amounts. Repeated test failures can cause tax implications for all participants. Your plan provider or an accountant can usually perform these tests and will be helpful in suggesting solutions should you run afoul of the top-heavy provisions.

***What happens to the 401(k) accounts when employees leave?***

The answer depends on the provisions of your plan and the employee's reason for leaving. There will be options for retirement, rollover, cash distributions, or remaining in a plan as an "inactive participant." Any money that an employee contributes into any plan is always 100 percent vested. An amount is considered vested if it belongs to the employee today. Subject to legal guidelines, employers may adopt a schedule that allows only a specific percentage of employer contributions to vest each year, so that the employee must work for the company for a determined number of years to be fully vested in the employer portion of the account. In these situations, an employee who leaves the company will be entitled to take away the full employee contribution and the vested percentage of the employer contribution.

**Other Retirement Plans*****What are the other types of defined contribution plans?***

**SIMPLE Plans.** If you are a business with 100 or fewer employees who each earned at least \$5,000 in the previous year, you are eligible to adopt a Savings Incentive Match Plan for Employees of Small Businesses (SIMPLE). Your SIMPLE plan will allow both you and your employees to make pretax contributions under rules that are much less complicated than those

for traditional 401(k) plans, with fewer administrative responsibilities and lower plan costs. An accountant, financial adviser, or independent plan administrator can provide you with the most up-to-date rules for SIMPLE plans and help you make decisions about setup and administration.

*Profit Sharing.* Many companies include some sort of profit sharing as part of their compensation structures, but you can also structure a profit-sharing plan as a defined contribution retirement plan. Employers can contribute a flexible amount based on individual salaries and company earnings. Employees do not make contributions to the plan and they do not receive payouts until they retire or leave the company. Profit-sharing plans can be strong incentives in companies where business fluctuates and participants can see and understand the results of their hard work. These plans are good options for smaller businesses because they allow employers to contribute in profitable years but not in tough times.

*Money Purchase Plans.* This is the simplest form of defined contribution plan. The employer makes a predetermined annual contribution to the account of each eligible employee, whether or not the company is profitable.

### ***What about nonqualified plans?***

A nonqualified plan is a retirement or deferred compensation plan that does not meet ERISA and IRS requirements for favorable tax status, but does provide a long-term investment vehicle for senior executives or owners. Nonqualified plans allow highly compensated employees to defer and invest more money than they can under a 401(k), especially those plans that have been determined to be top heavy. There are numerous forms of nonqualified plans, all of which involve potential risk for both the employee and the employer. Retain a reputable investment adviser to design your plans. Understand and inform participants about how contributions will be invested and the consequences and availability of early withdrawals.

### ***Do I have any other reporting requirements?***

The Employee Retirement Income Security Act (ERISA) sets out detailed reporting and compliance rules to ensure that employee benefit plans are properly administered, well funded, and do not favor owners and the highest earners in a company. You are required to complete a Form 5500 for each of your benefits plans at the end of each plan year. If you are offering health plans to employees through a chamber of commerce or trade association, you do not have to submit a Form 5500 for those plans. Form 5500



requests basic information about the number of employees covered and types of coverage. Your benefits carrier, plan administrator, or broker will often complete the forms for you or can send you the forms and filing instructions.

## OTHER BENEFITS

### *How do I get assistance with educational assistance programs?*

An educational or tuition assistance program (TAP) is an excellent way to increase retention and build a more skilled, loyal, and powerful workforce. Your best employees are those who continually work to improve themselves. A TAP will give them the tools to get ahead through further education. If you satisfy IRS taxation requirements when designing and implementing your plan, up to \$5,250 of the amount that you pay or reimburse the employee for continuing education will count as nontaxable income to the employee.

To qualify for favorable tax treatment under Section 127 of the Internal Revenue Code, you must have a written TAP document and a plan that does not discriminate in favor of highly compensated employees. Your plan must limit benefits to active employees, workers on approved leave, or disabled or laid-off employees. You cannot provide TAP benefits to spouses or dependents. While the law does not require you to limit educational assistance to work-related courses of study, classes at accredited institutions, or degree programs, you may adopt any of these requirements that you see fit. In addition, you can require that the employee earn a specified grade in the course in order to receive reimbursement.

Even if your plan does not satisfy the Section 127 requirements, a portion of your TAP benefits may qualify as “working condition fringe benefits” that are nontaxable to the worker if the education paid for or reimbursed is to maintain or improve skills required in the position, or if it is mandated by law or by the employer as a condition of continued employment, status, or rate of pay. Courses that enable employees to meet minimal educational requirements for different positions in their current fields or in new fields do not satisfy the fringe benefit requirement. It is your organization’s responsibility to determine the taxable portion of any tuition assistance payments that it makes. Seek help and clarification from professionals when necessary.

The most successful TAPs are those that employees actually use. Communicate your program well and publicize success stories. Some companies are reluctant to implement TAP programs, fearing that employees will leave

to work for other employers once they get their education. In fact, most employees who later move on do so because their former company did not give them the opportunity to use their new education and skills. As you develop your employees, develop new career paths and opportunities within the organization that will keep them challenged and motivated.

### ***Haven't we covered everything?***

While we have described the most common benefits, there are numerous others that you may want to offer or consider. Employees of retailers and consumer products companies frequently enjoy employee and family discounts. Subsidized or paid meals may be a big benefit for your workforce. Child care referrals, subsidies, or nearby day care providers may enhance your retention. We could continue on and on with the possibilities, but these will be for you to decide, based on your company philosophy. For each benefit, identify who will gain and your goal in implementation. Communicate that the benefit exists and how to use it. You can then measure use and satisfaction and continually develop and maintain a high-quality benefits package that your employees will appreciate and value.

# Regulatory Issues

## What Are the Major Employment Laws and How Do I Comply with Them?

One of the most challenging tasks you will face in human resources management is complying with employment-related laws. Not only are there countless federal laws governing all aspects of the employer/employee relationship, but there are also various state and local laws that expand upon federal employee protections or place requirements on employers in areas not covered by federal law.

Throughout this book, there are references to employment laws that relate to specific topics as they are discussed. In this chapter, we cover some of the other major federal laws. You will gain a sense of the broad reach of these laws and learn to spot potential problem areas within your company. Be sure to check with an attorney regarding the specific laws that apply in the state where your main business office is located, and in any other state in which your company employs workers.

### LAWS PROHIBITING DISCRIMINATORY PRACTICES

In 2002 alone, there were more than 84,000 charges of discrimination filed with the Equal Employment Opportunity Commission (EEOC) under the various federal antidiscrimination laws, resulting in approximately \$258 million in settlement costs to companies. This settlement amount does not

even include damages related to claims that actually made it to court—where employers incurred countless additional millions of dollars in damages for engaging in discriminatory employment practices.

While there is no way to completely prevent employees from claiming that they were discriminated against, there are ways to greatly decrease your potential for liability. Among them:

- ◆ Understand the basics of federal, state, and local statutes regarding discrimination and seek counsel in specific instances when questions arise.
- ◆ Create strong antidiscrimination and harassment policies and communicate them throughout the organization. Employers are required by law to conspicuously post notices advising employees of their rights under the laws enforced by the EEOC.
- ◆ Train executives, managers, and supervisors regarding proper workplace conduct and how to deal with actual or suspected violations.
- ◆ Evaluate the underlying *business reasons* for employment policies, procedures, and practices that you institute to ensure that they are driven by legitimate and not discriminatory motives.
- ◆ Establish a work environment where discrimination, harassment, and retaliation of any kind are not tolerated. Investigate all discrimination complaints seriously, and deal with wrongdoers appropriately and consistently.

### ***What are the primary federal antidiscrimination laws?***

The most significant laws affecting employers are:

- ◆ Title VII of the Civil Rights Act of 1964, prohibiting employment discrimination based on race, color, religion, gender, or national origin
- ◆ Age Discrimination in Employment Act of 1967, outlawing discrimination against workers age 40 and older
- ◆ Americans with Disabilities Act of 1990, protecting qualified individuals with disabilities
- ◆ Equal Pay Act of 1963, mandating that men and women who perform substantially equal work for the same employer under similar working conditions receive substantially equal pay

***What types of discrimination do the federal antidiscrimination laws protect against?***

Federal laws prohibit discriminatory practices that may arise in *all* aspects of the employment relationship, including:

- ◆ Recruitment, hiring, and firing
- ◆ Compensation, fringe benefits, assignment, and classification of employees
- ◆ Transfer, leave, promotion, layoff, or recall
- ◆ Testing
- ◆ Use of company facilities
- ◆ Training
- ◆ Any other term or condition of employment

The antidiscrimination laws also make illegal any *harassment* on the basis of an individual's membership in a class protected by any of these laws or association with a person in a protected class. They also prohibit *retaliation* against a worker for filing a charge of discrimination or participating in an investigation or taking actions that oppose discriminatory practices in the organization.

## **Title VII of the Civil Rights Act of 1964**

***Who does Title VII apply to, and what types of discrimination do the laws prohibit?***

Title VII applies to all private employers, state and local governments, and educational institutions that employ at least fifteen workers. The laws prohibit employment discrimination on the basis of race, color, gender, religion, or national origin. While blatant, direct discrimination is usually easy to spot, it is often more difficult to determine whether certain outwardly “neutral” policies, practices, or decisions will have an unfair impact on specific categories of employees. You may be held liable for actions that have a disproportionate impact on one or more protected categories of worker unless you can demonstrate that the basis for the action is job-related and serves a legitimate business purpose.

- ◆ *Race and Color Discrimination.* Title VII makes it illegal to discriminate in employment against individuals of a particular race or color. For exam-

ple, you cannot refuse to hire someone because he is Asian, or deny someone career developmental opportunities because she is Caucasian. The law also forbids discrimination on the basis of stereotypes about the characteristics of members of a specific race, such as assumptions that members of some racial groups do not work as hard or are less honest than others.

In addition, Title VII prohibits discrimination based on an unchangeable characteristic associated with race, such as skin shade, hair texture, or certain facial features. Therefore, since African-American men are prone to a condition under which they develop severe shaving bumps, a “no beard” policy may be found to violate Title VII unless you can show a sound, job-related reason for having this policy—such as a restaurant adhering to local health codes.

◆ *Religious Discrimination.* Under the religious discrimination laws, you cannot consider an employee’s religion in making hiring decisions. In addition, when requested by employees, you must accommodate their religious practices unless doing so would cause an undue hardship for the company. Reasonable accommodations may include providing workers time off for religious observances or providing a place to pray. You do not have to accept the particular accommodation requested by an employee; you are free to substitute a different one if it would serve the same purpose. There is no set definition of what constitutes “undue hardship,” but generally under Title VII, if the accommodation would cost you more than a minimal sum, you are not required to make the accommodation. Keep in mind, however, that some state laws hold employers to a higher standard to demonstrate undue hardship, such as showing that accommodating the employee would require significant difficulty or expense.

◆ *National Origin Discrimination.* National origin discrimination means treating someone less favorably or more favorably because of the place where he is from, or because she shares a common ancestry with people from a particular place. There are several components of national origin discrimination to which employers should pay particular attention when setting rules or policies or making other employment decisions.

*Foreign Accents.* Employment actions based on an individual’s accent are only permitted when the accent affects the ability to perform job duties. You cannot discriminate merely because a person speaks with an accent—the accent must interfere with communication skills *and* effective communication skills must be necessary for the job. Teaching and telemarketing positions are among those that may require effective oral communication skills, but never generalize. Always look at individual circumstances to determine whether a worker’s accent realistically bars her from doing an effective job.

*English Fluency Requirements.* Similar to the rules regarding foreign accents, you can only require employees to be fluent in English if fluency is a real and reasonable requirement for the job. While English fluency may reasonably be required of a salesperson, it is harder to argue that fluency is needed for a janitorial position.

*English-Only Requirements.* Some companies choose to adopt policies allowing only English to be spoken at the workplace. These policies are allowable if they are not implemented for discriminatory reasons *and* the rule is needed in order for the business to run safely and efficiently. Therefore, while a policy requiring bank tellers to speak English to the bank's English-speaking customers is appropriate, a policy requiring the same tellers to speak only English during breaks is unacceptable. If you have an English-only policy, you must notify employees of the rule, as well as the consequences for violation.

*Citizenship Requirements.* Title VII does not specifically outlaw discrimination based on citizenship, but it does prohibit using citizenship as a pretext for discriminating on the basis of national origin. If you choose to adopt a rule excluding noncitizens, be sure to adhere to it consistently and not keep one group out while admitting another.

### **BETTER FORGOTTEN: PARANOIA IS NOT A BUSINESS JUSTIFICATION**

A casino was ordered by the EEOC to pay \$1.5 million dollars to its Hispanic housekeeping staff after enforcing an English-only rule created because a non-Spanish-speaking employee believed that the others were talking behind her back in Spanish. Managers and others would shout, "English, English!" at Hispanic workers as they walked through the halls. According to the EEOC, there was no proper business reason for the rule and the treatment of the Hispanic staff was humiliating.

- ◆ *Gender Discrimination.* Gender discrimination covers employment decisions that are based on a person's sex, sexual harassment, and pregnancy discrimination.

*Sexual Harassment.* Sexual harassment law can be complex because illegal harassment can take many forms and encompass a variety of subtleties. While sexual harassment claims are most frequently filed by women, the victim—as well as the harasser—can be either male or

female, and there is no requirement that the victim and the harasser be of opposite sexes. According to the EEOC, the harasser can be the victim's supervisor, coworker, a supervisor in another area, or agent of the victim's employer. In fact, the victim does not even have to be the person actually harassed, but can be anyone who is negatively affected by the offensive conduct.

### ***What types of conduct do the sexual harassment laws prohibit?***

In general, behavior constituting sexual harassment falls into two categories: quid pro quo and hostile environment. The line between the categories is not always clear, and it is possible for both types of harassment to occur together.

1. *Quid pro quo* describes situations in which the victim's engaging in sexual conduct with the harasser becomes the basis of the employment decision. Examples of quid pro quo harassment are a supervisor saying, "Have sex with me and you will get the promotion," or "If you don't have sex with me you will be fired."
2. *Hostile environment* situations are those where sexual conduct is not a prerequisite for an employment decision, but the working environment is so pervaded by discrimination, insult, or abuse that it becomes unpleasant or threatening for employees to do their jobs.

Quid pro quo harassment is relatively simple to define and determine, whereas hostile environment harassment is often ambiguous and complex. Hostile environment claims make up the majority of sexual harassment complaints. Conduct that is considered sexual harassment comes in many forms, including:

- ◆ Sexual advances or requests for sexual favors
- ◆ Verbal or physical contact that is sexual in nature (e.g., pornographic pictures in the workplace; lewd or offensive jokes shared verbally or through office e-mail exchange)
- ◆ Blatant hostility toward an employee or group of employees due to their gender (a situation that often occurs when women work in jobs or environments that were previously occupied solely by men)

For conduct to be considered illegal sexual harassment, it must be unwelcome, severe, and pervasive in the workplace. Unwelcome behavior is



that which the affected party did not solicit and found offensive or undesirable. While true consensual sexual relationships are not harassment, just because an employee agrees to the activity does not automatically make the relationship consensual. If an employee voluntarily entered into a sexual relationship with her supervisor because she feared losing her job if she did not comply, she may have a valid legal claim. Even more problematic is the situation where a sexual relationship is initially consensual, but later one of the employees wants to end the relationship and the other persists in sexual conduct. Behavior that persists past the point where it is consensual for both parties is sexual harassment.

To be considered severe, the conduct must be serious enough that a “reasonable person” would find it offensive. This standard precludes the hypersensitive person from successfully claiming injury from an innocuous remark or action. “Pervasive” behavior means that it is persistent in the workplace rather than occurring in isolated instances. A male employee asking a female coworker on a date one time is not harassment, even if the woman makes clear she is not interested, but repeated requests can develop into a harassment situation. Conversely, only one instance of groping or one quid pro quo demand can give rise to an actionable harassment claim.

### ***When will the employer be held liable for sexual harassment?***

As an employer, you will be automatically liable for any harassment that leads to a significant change in employment status, such as hiring, firing, promotion, or demotion. If the harassment does not lead to a significant change in employment status, you will be held responsible unless you can prove that:

- ◆ You exercised reasonable care to prevent and promptly correct the harassment.
- ◆ The employee unreasonably failed to complain to management or otherwise avoid harm.

### ***What steps can I take to prevent and correct harassment in order to minimize my risk of liability?***

Most important, you need a written policy prohibiting workplace harassment. While there is no specific form of policy required under the laws, yours should have the following elements:

- ◆ A statement that the company will not tolerate harassment, whether sexual or based on religion, race, national origin, age, or disability

- ◆ Direct assurance that there will be no retaliation against those reporting harassment
- ◆ A clear procedure for reporting complaints and conducting investigations
- ◆ A statement that although the organization will protect the confidentiality of all parties to a complaint to the extent possible, it may have to share certain information with those with a need to know

Your complaint procedure should designate more than one individual to whom the employee can report harassment, preferably both male and female, so that complaining employees can select individuals with whom they feel most comfortable. The EEOC has specifically stated that it is not enough that the harassment policy instruct employees to inform their supervisors of harassment; after all, it may be the supervisor who is committing the harassment in the first place! You might consider designating people from a variety of areas in the organization to receive complaints, such as members of the executive staff, legal staff, and human resources. Some companies successfully use an independent hotline service so employees can report violations to impartial, outside parties.

Some states require employers to conduct mandatory sexual harassment training for managers and supervisors. Inquire whether any harassment education laws exist in your state.

It is essential to conduct a fair and comprehensive investigation of all employee complaints. (See Chapter 9 for more information on effective workplace investigations.) During the investigation, take steps to keep the complaining and the accused parties apart. Reasonable steps may include assigning one or both individuals to different work areas to minimize the opportunity for contact, or placing the accused on paid leave pending the results of the investigation.

If, as a result of the investigation, you determine that harassment has occurred, you must take immediate action to end the harassment and keep it from happening again. The discipline meted out to the harasser should correspond with the seriousness of the offense.

Don't wait until a complaint is filed to work toward eliminating harassment or inappropriate conduct in your organization. Train managers and supervisors to recognize and report harassment and to handle complaints. If you are aware that employees are using the company e-mail system to distribute questionable jokes or that there are sexually graphic pictures hanging in the men's locker room, act now before an incident occurs.

**WORTH REPEATING: “NOT AT A COMPANY FUNCTION, YOU DON’T!”**

A young executive was observed propositioning several female employees at an off-premises, company-sponsored function. When his boss rightfully admonished him, he claimed that his behavior was okay, since he was not on company premises. Improper conduct at any company event can be considered harassment, no matter where it takes place.

***If an employee does not complain, can the company still be held liable for harassment?***

Yes, if the failure to complain was reasonable under the circumstances. Generally, an employee is required to take reasonable steps to avoid the harassment and to keep it from becoming worse. Therefore, if an organization has a sound antiharassment policy with clear complaint procedures, the affected employee will normally be expected to use the designated complaint procedure unless there were legitimate reasons for not using it. Legitimate reasons can include fear of retaliation or the knowledge that the company had not acted to investigate and deal with harassment complaints in the past.

It is the employer’s responsibility to prove that the failure to complain of harassment was unreasonable. If you create a workplace environment where an employee feels comfortable filing a complaint and knows that you will take the complaint seriously without retaliation, it will be harder for an individual to justify failure to report a problem.

***Can I ever fire a pregnant woman?***

Yes, but not because of her pregnancy. You may properly terminate her employment for performance reasons, layoffs, or any other legitimate circumstances; however, it is important to determine that these conditions are legitimate rather than a pretext for discrimination.

◆ *Pregnancy Discrimination.* An amendment to Title VII, the Pregnancy Discrimination Act, prohibits discrimination against women because they are pregnant or experience conditions or take leave related to pregnancy. If an employee is temporarily unable to perform her job because of her pregnancy, you are required to make reasonable accommodations, such as

modifying her tasks or providing disability leave without pay. When the employee takes a pregnancy-related leave of absence, employers are required to hold her job open for the same period of time as jobs are held open for other sick or disability leaves. Health insurance benefits must cover expenses for pregnancy-related matters to the same extent as coverage is provided for other medical conditions. It is illegal to limit pregnancy benefits to married employees.

### ***What is this I hear about Title VII reporting requirements?***

If you are a private employer with 100 or more employees, or a federal contractor with at least fifty workers, you are required to file an EEO-1 employer information report with the EEOC by September 30 of each year. The EEO-1 report provides a breakdown of your workforce by gender, racial/ethnic classification, and job category. You may use employment figures from any pay period from July through September, including both full- and part-time employees.

If you have collected any information from employees after they were hired that identifies their race or ethnicity, you should use this data for your EEO-1 report. If you do not have this data, you are permitted to take a visual survey of your workers and make your best guess as to each worker's race/ethnicity. The EEOC does not recommend that you ask employees directly. The EEOC publishes a helpful instruction booklet with guidance on determination of race and definition of individual job categories.

## **Age Discrimination in Employment Act of 1967 (ADEA)**

### ***Who is covered by ADEA and what types of discrimination does the law prohibit?***

The ADEA applies to all employers with twenty or more employees, including state and local governments. It protects individuals age 40 and over from discrimination in employment on the basis of age and from retaliation for making a complaint or participating in an investigation concerning age discrimination.

The restrictions of ADEA are very similar to the prohibitions of Title VII. As with the Title VII laws, employers can be held liable for outwardly neutral policies that have a disproportionate impact on older workers. If you have a policy or practice that tends to have a negative impact on protected employees, make sure you can articulate a valid business reason for maintaining it.

***Is it ever acceptable to make employment distinctions based on age?***

Yes, under very limited circumstances. Age limitations are allowed when age is a bona fide occupational qualification that is reasonably necessary to operate the business. A movie casting agent seeking to cast a role of a young man would not be required to interview or hire older males for the part. Employers may also enforce bona fide seniority systems as long as these systems are not intended to evade the intent of ADEA. In addition, it is allowable to reduce benefits paid based on age if the cost of the reduced benefits for older workers is the same as the cost of providing benefits to younger workers.

***Can our company adopt a mandatory retirement policy?***

No, it is illegal to require an employee to voluntarily retire at a particular age unless age is a bona fide occupational qualification for performing the job.

***Can workers elect to waive their rights under the ADEA?***

Yes, but the waiver must be voluntary and the employee must understand the significance of the document. A valid waiver must be in writing; specifically refer to ADEA claims; be in exchange for valuable compensation or other benefits given to the employee; advise the individual in writing to consult an attorney before signing the waiver; and provide the individual with at least twenty-one days to consider the agreement and seven days after signing to revoke the waiver. You cannot ask employees to waive future rights or claims. If you are requesting a waiver in connection with an early retirement program or other voluntary termination incentive, there are additional requirements in order for the waiver to be considered proper.

If you are considering requesting an employee to execute an ADEA waiver, consult with an attorney, both to ensure that a waiver is appropriate under the circumstances and that the waiver document complies with the law.

## **The Americans with Disabilities Act of 1990 (ADA)**

***Who is covered by ADA and what types of discrimination does this law prohibit?***

The ADA covers employers with fifteen or more employees. The law prevents employers from making employment decisions that discriminate against qualified individuals with disabilities.

The ADA also prohibits employers from retaliating against individuals asserting their rights under the ADA, and from discriminating against people because of their family or other relationship with a person with a disability. Employers cannot refuse to hire a person with a disabled spouse because of concerns about medical costs or fear that the spouse will cause the employee to miss time from work.

To be protected by ADA, the individual must 1) have a covered disability and 2) be qualified to hold the position in question.

### ***What is a covered disability under ADA?***

According to the EEOC, a disability is a physical or mental impairment that limits major life activities. This definition covers impairments to hearing, speaking, sight, breathing, performing manual tasks, walking, caring for oneself, learning, or working. Temporary or minor impairments do not qualify as disabilities under ADA. If an employee has a broken arm that prevents him from performing his job on the loading dock, this is not a protected disability.

### ***Who is considered a “qualified individual” under the law?***

Qualified workers or job applicants must have all of the experience and background required by the position. They must have the required degrees, skill, training, and knowledge to perform the essential functions of the job, with or without accommodations. There has been much confusion among employers about what constitutes essential functions and what constitutes minor, noncritical job functions. If you have job descriptions, the major duties listed in these documents are the essential functions. When determining whether specific persons are qualified, it is important to look at whether tasks that they cannot perform are really critical functions or ones incidental to the position.

The ADA does not require that you hire a qualified applicant over other applicants or promote a qualified worker over other workers just because that individual has a disability. The law only prohibits *discrimination* on the basis of the disability. It makes it unlawful to take adverse employment actions based on an individual's disability or need for a reasonable accommodation.

### ***What reasonable accommodations are employers required to make?***

Employers must make reasonable accommodations for employees with disabilities unless making the accommodation would cause the company

undue hardship. A reasonable accommodation is any change in the work environment or the way a job is performed that would allow a person with a physical or mental disability to enjoy equal employment opportunities. An employer must consider a reasonable accommodation upon the written or verbal request of an employee (or the employee's physician). In situations involving obvious disabilities, you may ask the employee whether reasonable accommodation is needed.

The following are examples of types of reasonable accommodations that you might be required to make:

- ◆ *Restructuring a Position.* This can include shifting minor functions of a position that the employee with a disability cannot perform to other employees who can perform them, or altering when and how the job is performed. You are *not* required to restructure a position to eliminate a primary job responsibility.
- ◆ *Making Existing Workplace Facilities Accessible.* Federal and state regulations require employers to adhere to specific standards to make their facilities accessible for persons with disabilities. In addition, an employer may be required to make modifications above and beyond those required by these laws to accommodate the specific needs of its employees.
- ◆ *Providing Unpaid Leave.* If an individual's disability requires unpaid leave, providing this leave may be a form of reasonable accommodation, provided it does not cause your company undue hardship. Persons returning from leave should be reassigned to the same position unless, again, it would cause an undue hardship. You are not required to provide more paid leave to accommodate a person with disability than you provide for other employees.
- ◆ *Providing a Modified Schedule.* This accommodation may involve adjusting arrival and/or departure times, part-time hours, or periodic breaks, or changing the time of day at which certain tasks are performed.
- ◆ *Reassignment.* Unless you can show that it would cause undue hardship to the company, you may be required to reassign an employee who can no longer perform essential job functions because of a disability to a vacant position with responsibilities that the individual can perform. Whenever possible, this new position should be of equal pay and status. You are not required to create a new position, promote the employee, or bump other employees to provide this accommodation. Moreover, the individual must be *qualified* for the new position. You need not provide additional training to enable an unqualified individual to become qualified.

Providing reasonable accommodation can also mean offering employees with disabilities benefits comparable to those offered to other employees. For example, if you provide training to comparable workers, then you must modify the programs, if necessary, to accommodate individuals with disabilities. Examples are providing an interpreter or making training manuals available in braille or on audiotape. Both in-house and outside facilities must be made accessible. Holding your training in a contracted facility or using consultants to conduct the workshops does not excuse you from this responsibility. If your workplace has a cafeteria, lounge, auditorium, or company-provided transportation and counseling services, they must be made accessible to employees with disabilities or you must provide an alternate facility to accommodate them, unless doing so would cause undue hardship.

### ***What is “undue hardship”?***

This is the standard by which the EEOC and the courts determine whether a specific accommodation is reasonable. Undue hardship can include significant financial expenditures or measures that would be unduly extensive or disruptive or significantly alter the nature or operation of the business. Each request for a reasonable accommodation should be evaluated individually, taking into consideration the cost of the accommodation, the resources of the employer, the effect on the business, and the impact on other employees. What constitutes undue hardship for one employer will not necessarily apply to another. A small start-up business is held to different standards than a multinational corporation. However, a company may never claim undue hardship based on the fears of employees or customers, or their prejudice toward individuals with a specific disability.

### ***How can I work with my employees to develop appropriate reasonable accommodations?***

The establishment of a reasonable accommodation should result from an interactive process between employer and employee that clarifies the scope of the disability and the specific need for accommodation. You are only obligated to provide reasonable accommodation if you are aware that a disability exists. When disabilities are not obvious, it is up to the individuals to disclose their conditions to you if they feel they need a reasonable accommodation. There is no obligation on the part of the individual to disclose a disability or request an accommodation, but if he later fails to meet the requirements of the job because he did not have the necessary accommodation, this is not the employer's fault. You may not ask applicants or



employees about their disabilities during the interview process or after employment (see Chapter 1).

Frequently, an employee will suggest a workable accommodation. Other times, the individual will not know exactly what accommodation is needed and you will need to examine the alternatives together. If there is more than one alternative accommodation that would allow the employee to perform the functions of the job, you may choose the least burdensome and/or least expensive option.

Employers may incur significant legal liability and financial penalties for failing to make reasonable accommodations for an employee with a disability. Therefore, if you are in doubt about whether you are required by law to make a specific accommodation, consult with an attorney before denying the request.

### **WORTH REPEATING: A VERY REASONABLE ACCOMMODATION**

A small employer had an employee with a learning disability that caused him to make errors transcribing numbers. The company contacted its state department of labor for assistance and was referred to a low-cost, state-funded training program to help the employee work with his disability.

## **The Equal Pay Act of 1963 (EPA)**

### ***Who does the EPA apply to and what are its major provisions?***

The EPA applies to virtually all employers. Under this law, employers must pay equal wages to men and women who perform jobs requiring substantially equal skill, effort, and responsibility under the same working conditions in the same establishment. Here's what these terms mean under the law:

◆ *Skill.* When comparing the skill sets of two workers, it is important to look at the skills that are necessary for the job, not the total skills possessed by each of the individuals. For example, if a man and a woman are both staff accountants with bachelors degrees in accounting and ten years' accounting experience, you cannot use the fact that the man has a PhD in

English to justify his higher pay rate, because this graduate degree is not related to the job requirements.

- ◆ *Effort.* This pertains to the amount of physical or mental exertion that it takes to do the job. If you have two individuals in quality inspection positions, but one of them is inspecting small products and the other is examining heavy machinery that he needs to lift, you are permitted to pay the second inspector more than the first.
- ◆ *Responsibility.* This refers to the amount of accountability inherent in the position. If only one of two restaurant servers is permitted to handle cash, the increased responsibility justifies payment of a higher wage. If the difference in responsibility is minor—say, for example, that one server is designated to answer the telephone—higher pay is not justifiable.
- ◆ *Working Conditions.* Working conditions comprise both physical surroundings and hazards. If a hospital employs two nurses' aides, one working in a children's ward and one with violent patients, the increased risk incurred by the second aide could merit a pay differential.
- ◆ *Establishment.* An establishment, according to the EEOC, is a "distinct physical place of business." You can generally pay diverse wages to employees doing the same job in different states.

In addition, you may pay employees varying wages if they are based on factors other than sex, such as seniority or merit, but it is your responsibility to prove that you are using valid rather than discriminatory criteria. Audit your salary structure periodically to make sure that you are not inadvertently violating the EPA. If you find that your payroll practices need adjustment, you may not reduce the pay of the higher-paid employee but must raise the wages of the lower-paid worker.

## THE FAMILY AND MEDICAL LEAVE ACT

The Family and Medical Leave Act (FMLA) allows covered employees to take up to twelve weeks' unpaid leave of absence per year and requires employers to protect the employee's job and continue health benefits coverage during the periods of leave. The law recognizes that workers may experience health and/or family situations that necessitate a leave of absence. It was designed to help employees achieve a balance between their work lives, their health, and personal considerations.

Many states have laws similar to the FMLA, some providing more generous benefits than the federal laws, which are administered by the U.S. Department of Labor. If you are in a state with leave regulations that differ

from those of the FMLA, you are required to give your employees the benefit of whichever law offers the most generous protection.

Employers must post notices informing workers of their FMLA rights in prominent places in work facilities. If you have an employee handbook or collective-bargaining agreements, these should have sections describing employee rights and employer policies under the law.

### ***Which employers/employees are covered by the FMLA?***

The Family and Medical Leave Act covers employers with fifty or more full- or part-time employees on the payroll. It covers all public agencies, and public or private elementary and secondary schools. To be eligible for FMLA coverage, an employee must:

- ◆ Have worked for the organization for at least twelve months
- ◆ Have worked for the organization at least 1,250 hours during the last twelve months
- ◆ Work in a location where the company has at least fifty employees working within a seventy-five-mile radius of the location

### ***When can an eligible employee take FMLA leave?***

Leave is restricted to certain defined conditions:

- ◆ *Birth, Adoption, or Foster Care.* Employees becoming parents through birth, adoption, or foster care placement may take a leave of absence within one year after the arrival of the child. In certain situations, the expectant parents can begin the leave before the child arrives. The leave is available to both men and women, but if the husband and wife work for the same employer, their leave may be limited to a combined twelve weeks.
- ◆ *Serious Health Condition of the Employee.* The condition must render the employee unable to do his or her job. The law is quite specific and complicated regarding the types of health conditions that qualify for FMLA leave, but generally these conditions include inpatient care; periods of more than three days where the employee is unable to function normally and is under the care of a doctor; pregnancy or prenatal problems; or other material health issues.
- ◆ *Serious Health Condition of a Family Member.* If a family member has a serious health condition, the employee may take leave to care for this individual. “Family member” under the law is limited to parents, children, or spouses. Other family members and domestic partners are not included.

### ***How should employees request FMLA leave?***

Employees should give notice at least thirty days in advance for leave that is foreseeable (such as birth or adoption of a child), or as soon possible for leave that is unforeseeable (such as emergency personal or family health issues). The notice should specify the reasons for the leave and its expected duration.

### ***Can I request confirmation of a serious health condition?***

When the leave involves a personal or family health concern, you may request that the worker provide medical certification, allowing the employee at least fifteen days to comply. If the worker fails to provide the certification within the time provided or an otherwise reasonable time, you may delay the leave until you receive the information. You have the right to require that the employee obtain a second opinion from an independent physician at your company's expense. The employee may only take the amount of time off that is necessary under the circumstance for which the leave is requested. You may not request details of the health condition, but if the employee grants permission, you can have your health insurance carrier contact the medical provider to obtain confirmation that the claimed condition exists.

### ***Do I have to give employees anything in writing when they request an FMLA leave?***

You must provide the worker with a timely written notice specifying employee rights and obligations under the law, preferably within two business days. If you don't provide a notice in a timely manner, you may not be able to deny the leave, even if the employee was not eligible. The notice must specify:

- ◆ Whether, and how much of, the time off will count toward the FMLA entitlement.
- ◆ Requirements for submitting medical certification and the consequences of failure to do so.
- ◆ The employee's right to substitute paid leave, such as vacation time and sick days. As the employer, you may require that available paid leave be used first, provided you notify the individual of this requirement.

- ◆ Whether you require a medical certification of fitness to return to duty upon the employee's return from a personal medical leave.
- ◆ The employee's right to restoration to his position or substantially equivalent position upon return from leave.
- ◆ Whether the employee is a "key employee" under the FMLA. Key employees are those salaried employees in the top 10 percent of the company's pay range. The law takes into account that these individuals may be so important to the organization that their extended absence would cause the organization substantial harm. You do not have to guarantee restoration of position to these employees as long as you notify them of their key employee status when they request the leave. You must still give the key employee a reasonable opportunity to return to work from FMLA leave.
- ◆ Requirements for making any contribution for health care premiums and consequences for failure to pay on time. You may only require copayments at the same level the employee was required to make prior to the leave.
- ◆ Whether workers have the obligation to repay the employer if they do not return to work. This notification applies if your company is paying any portion of employee health care premiums during the leave.

### ***Can I inquire about employee status during the leave?***

Yes, it is totally acceptable to maintain contact with workers during their leaves, but you cannot contact medical providers or other third parties. You may, with advance notice, require employees to contact you periodically to report on their status, as long as you require all employees on FMLA leave to do so. Requesting that only certain workers report in may be viewed as discriminatory. You may also, with notice, require subsequent medical certifications, but not more frequently than every thirty days.

### ***Do employees get their jobs back after they return from leave?***

By law, you are required to hold the individual's position open or provide an equivalent position upon her return. An equivalent position is considered one that is virtually identical to the previous one in pay, benefits, working conditions, and status. There are many additional factors that determine whether a job is equivalent, such as duties, location, schedule, fringe benefits, skill, and authority. In some situations it will be easy to offer an equivalent role, especially if an organization has many positions in a

particular job category. When a position is highly specialized, it may be harder to prove that a new position is equivalent. Although it may be expensive and inconvenient to hold a job open, if you are not sure that you can provide an alternative position that is truly equivalent, you may have no other choice.

### ***Can you fire an employee on FMLA leave?***

Yes, under proper circumstances. Although you cannot take any adverse action *because* an employee is on leave, you are allowed to take any employment actions that you would have otherwise taken if the employee had been on the job. If you conduct a layoff during the leave period and you have valid reasons for eliminating the position, you may do so and you will not be obligated to offer an equivalent job. Your obligations to the employee will end on the date of the layoff—except that you will be required to offer the same termination benefits offered to other laid-off employees. In this situation, be sure to document the legitimate reasons for eliminating this position in the event of future legal challenges.

## **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1979**

As an employer, you are no doubt concerned about keeping your workplace safe for your employees, your vendors, and your customers. The Occupational Safety and Health Act (OSH) was enacted to set certain national standards and guidelines to promote safe and healthful workplaces. The Occupational Safety and Health Administration (OSHA) administers OSH regulations. OSHA has two primary functions: to set workplace safety and health standards and to conduct inspections to ensure that employers are complying with those standards.

According to OSHA statistics, workplace fatalities have decreased by 50 percent and occupationally related illnesses and injuries are down 40 percent since the formation of the agency. Still, workplace injuries continue to occur at a disturbing rate. The Bureau of Labor Statistics reports that in 2001 alone, 5.7 million U.S. workers suffered job-related illnesses or injuries, and almost 6,000 people died on the job.

Virtually all businesses with employees are required by OSHA to maintain a safe workplace. In addition, OSHA has industry-specific standards that relate to the particular hazards present in that industry. States are allowed to have their own safety plans, provided they are at least as protective as the federal regulations. If your business is in a state with its own plan, you must follow state laws. If your state does not have a safety plan, the

federal guidelines will apply to you. For more information on applicable state laws, contact your state's labor department.

OSHA standards are divided into four major categories: general industry, construction, maritime, and agriculture. General industry requirements also apply to construction, agriculture, and maritime businesses unless the business category has its own standards on the subject.

Since laws relating to individual industries are broad and complex, we will limit our discussion to general industry requirements. You can obtain detailed information about specific industry standards directly from OSHA.

### ***What are my basic responsibilities under the OSHA regulations?***

All employers are charged with a general duty to maintain a safe workplace, free of hazards that are likely to cause death or serious physical harm. This means that you are responsible for making your workplace safe, even if your business is not subject to industry-specific OSHA regulations. In addition, you must conspicuously post notices informing employees of their workplace safety rights.

*Personal Protective Equipment.* You must supply employees, at company expense, with personal equipment for protection against certain hazards. Depending on the industry and the hazards involved, this can include helmets to prevent head injury, goggles for eye protection, or respirators for potential airborne hazards.

*Hazard Communication.* If you manufacture, import, or work with hazardous materials, you are required to conduct an evaluation of these materials and to properly label them if they present sufficient risk under the law. You must include a material safety data sheet (MSDS) in your first shipment to a new customer. Manufacturers and users of hazardous materials must use the MSDS to train your employees to recognize and safely handle them.

*Access to Medical and Exposure Records.* You are obligated to grant your employees access to any medical records you maintain regarding that employee, including records maintained about the employee's exposure to toxic substances.

*Record Keeping and Reporting.* All employers with more than ten employees (with the exception of certain low-hazard employers in industries such as retail, finance, insurance, real estate, and certain service businesses) must maintain OSHA-specified records of job-related injuries and illnesses. You can purchase effective software to facilitate your tracking and record-keeping obligations. Employers in all industries are required to report to

OSHA, within eight hours of occurrence, any accident that results in a worker's death or in the hospitalization of three or more employees.

### ***Will OSHA come to inspect my business?***

Unless you are engaged in what OSHA considers a low-risk industry, OSHA may conduct regularly scheduled "programmed inspections" of your facility to determine whether you are compliant. If you have less than ten employees and an adequate safety record, you will be exempt from programmed inspections unless you have had a poor safety record in the past.

Any company may be subject to an OSHA inspection if:

- ◆ It has reported an accident involving a worker's death or the hospitalization of three or more employees.
- ◆ OSHA receives a complaint from an employee or other party. Under the law, OSHA is permitted to keep the identity of any complaining employee confidential. You are not permitted to retaliate against any employee for filing a complaint or participating in an OSHA investigation.
- ◆ OSHA perceives that there is an imminent danger that warrants an inspection.

Generally, OSHA inspectors (or, if your state has a safety plan, the state inspector) will not notify you before their visit to your facility. You have the right to demand that the inspectors obtain an inspection warrant before allowing them to enter your premises. If you don't demand a warrant, then you will be considered to have voluntarily consented to the inspection. You may accompany the inspector on the facility tour, but the inspector is permitted to speak to individual employees privately.

### ***What happens if OSHA finds violations during the inspection?***

If the inspection reveals violations, OSHA will issue a citation to your company that details the violations, notifies you of the proposed penalties, and informs you of your rights to appeal the charges. You may then decide to pay the penalties and correct the violations, enter into settlement negotiations with OSHA to reduce the penalties, or file a "Notice of Contest" indicating your intention to contest the findings before the Occupational Safety and Health Review Commission. This commission is an independent agency unrelated to OSHA or the Department of Labor.



**BETTER FORGOTTEN: “IS THERE A TRAITOR IN OUR MIDST?”**

After an OSHA inspection of a pharmaceutical company plant turned up several safety violations, the plant manager was so busy trying to figure out who reported the violations that triggered the inspection that he did not adequately remedy the violations. Since it is illegal to retaliate against an employee for making an OSHA complaint, this manager would have best spent his time fixing the problems and moving forward.

Penalties will vary according to the seriousness of the violation and whether your company has had repeat violations. If your company knew or should have known that it was committing a serious violation, or is aware that a hazardous condition exists that it has taken no steps to remedy, this is considered a “willful violation,” which carries a minimum penalty of \$5,000 to a maximum of \$70,000. If the willful violation resulted in the death of an employee, a court can impose a more substantial fine on the company, as well as imprisonment for those responsible for the violations.

**IMMIGRATION REFORM AND CONTROL ACT OF 1986**

As discussed earlier in this chapter, Title VII forbids discrimination on the basis of national origin or citizenship. However, while businesses in the United States are encouraged to hire a diverse workforce, they must limit their hiring to those who have the right to legally work in the United States. The Immigration Reform and Control Act (IRCA) sets out rules that employers must follow to ensure that they hire people eligible to work here, whether they are U.S. citizens or aliens authorized to work.

***What do I have to do to comply with the IRCA?***

Employers must complete and retain a Form I-9, Employment Eligibility Verification, for all employees hired after November 6, 1986. You can obtain copies of this form from the Bureau of Citizenship and Immigration Services. For each new employee that you hire, you will need to take the following steps:

1. Ensure that your employees fill out the information at the top of Form I-9 on the first day of work. If they cannot complete the form themselves

or need translation, you may provide them with assistance as long as the preparer or translator fills out the designated certification block on the form. The employer is responsible for making sure that this part of the form is completed in full. An I-9 is only required for workers you actually hire; you should not have all job candidates filling out this information. Since the form contains citizenship and national origin information, you could risk a discrimination lawsuit if you do not hire the applicant.

2. Review documents establishing the *employee's identity and eligibility to work*. The employee must present to you original documents from the list of documents considered acceptable by the government. The employee is required to present her documentation within three business days after beginning work. If she is unable to provide the documentation, she must present a receipt for the application for the chosen documentation within the same three-day time frame and the actual document within ninety days after beginning employment.
3. Complete Section 2 of the Form I-9 (pertaining to information about the identity and eligibility documentation presented to you). The IRCA does not mandate that you make a copy of the documentation the employee has presented, and even if you keep copies, you must still complete Section 2 of the I-9. However, copies of the documents can be useful for backup purposes. If you do make copies, attach them to the I-9.
4. Retain the Form I-9 for three years after the date the employee begins work or for one year after the termination date, whichever occurs later.
5. Make the Form I-9 available for inspection by government immigration officials, upon at least three days' prior notice. For privacy reasons, do not store the I-9 form in the employee's employment file. Maintain all forms in a central location, such as a three-ring binder, so that you will have them all handy if you are audited. Administration will be easier if you keep I-9s for active employees in alphabetical order in one location, and when employees leave the organization, you move their I-9s to a binder for terminated employees, kept in alphabetical order by month. This will make it easier for you to identify the I-9s that you can dispose of one year after termination.

The Bureau of Citizenship and Immigration Services imposes financial penalties on employers that violate the provisions of the law, with strict penalties for willful violations. Engaging in a pattern or practice of hiring or continuing to employ illegal aliens, or committing fraud in connection with the immigration laws, can result in criminal penalties as well.

**WORTH REPEATING: “WE’LL WAIT FOR YOU!”**

A highly qualified foreign technician who did not yet have legal eligibility to work in the United States offered to work as an “unpaid intern” for a prospective employer until her work visa came through. The employer thanked her, but said that it would wait instead for her to obtain legal status. It is risky and inadvisable to enter into any questionable hiring arrangements.

***Can I specify which identification and work eligibility documents an employee must present to me?***

No. You must accept the documents given to you, as long as they appear to be genuine. You cannot require certain employees to produce more documentation or make government inquiries requesting further information if the documents look valid. If the documents show obvious signs of tampering or forgery, do not accept them or your organization may be charged with knowingly employing an illegal alien. If you suspect that an employee is presenting fraudulent paperwork, you should contact an attorney to discuss a plan of action.

***Do I need to maintain a Form I-9 for independent contractors?***

No. If you use contract employees from any source, such as a temporary agency or a food service company, that third-party company is responsible for obtaining the identity and eligibility documentation and maintaining the I-9s. Similarly, if you hire an independent consultant, you need not verify her work authorization. However, you cannot knowingly use contract labor for the purpose of circumventing the laws.

***What do I do about work authorizations that expire during the employment term?***

It is the employer’s responsibility to track I-9s and to update them for reverification of employment authorization. It is critical to have some type of a tickler system to track future expiration dates. You should remind employees to renew their work authorizations at least ninety days before the expiration date.

***What should I do if I rehire a person who previously filled out an I-9?***

If you rehire the person within three years of the date of completion of the original document, you may update the I-9 instead of preparing a new one. If the employee's work authorization documented in the original I-9 has expired, you should ask for proof of an extension and then record that information on the form. Don't consider the date of expiration of authorization in making a hiring or employment decision, because this could be considered discriminatory.

# **When Bad Things Happen to Good Employers**

## **How Do I Handle Volatile Workplace Issues?**

■ Inappropriate or illegal employee conduct can create a wealth of problems for any employer. It can result in a decrease in productivity, damage to the organization's business or reputation, injuries to employees and customers, and exposure to costly legal liability. Today, employers are more concerned than ever about safety and security issues, and they may be exposed to increasing legal liability for failing to make reasonable investigations into the background and on-the-job activities of their employees.

Employee misbehavior can take many different forms—from substance abuse that can create workplace hazards, to workplace violence that threatens individual safety, to improper e-mail and Internet usage that can result in exposure to lawsuits and security violations. Now more than ever before, employers need to be vigilant and knowledgeable as to the warning signs of inappropriate or illegal conduct, the preventive measures to take, and what to do when employees engage in behavior that is likely to put the company or others at risk.

The increasing emphasis on security is, however, combined with

mounting concern about individual privacy in all areas of our society. Every day, companies exchange information about our buying habits, track our online activities, and develop and use new surveillance technologies. The outcry from privacy advocates against the increased collection and sharing of personal data has led to new laws to protect individuals and heightened public awareness. Employers also need to understand where to draw the line in checking up on the workforce. The employer that goes too far in its quest for knowledge and conducts overly intrusive investigations and monitoring runs the risk of significant legal and human resources problems that may far outweigh the benefits of any information obtained.

How does an employer handle these sensitive issues? How far can and should a business go in the investigation of the conduct of its employees? There are no clear-cut answers to these questions. Employers must carefully balance their proper business needs against the privacy rights and expectations of their employees.

This chapter discusses some of the current hot button issues related to workforce misconduct and how to deal with them effectively and safely.

*First, a rule of thumb . . .*

When looking to investigate or monitor any type of employee activity, you should ask yourself these questions:

- ◆ Is the scope of the surveillance, monitoring, or investigation *reasonable*?
- ◆ Is there proper *business justification* for the surveillance, monitoring, or investigation?
- ◆ Are proper steps being taken to *protect* any employee-sensitive information uncovered during the course of the surveillance, monitoring, or investigation from disclosure to parties that do not have a need to know this information?

If you are able to answer yes to all of these questions, you are less likely to encounter problems resulting from your actions down the line.

***Does it matter whether my company is a public or private employer?***

Different standards apply to public and private employers. Public employees (i.e., employees of state and local governments and their agencies, school districts, and special districts, etc.) are expressly protected by Fourth

Amendment rights to privacy in the workplace, whereas private employees are not. As a general rule, public employers must always either inform workers of surveillance or monitoring or position all surveillance equipment in visible locations.

## **ELECTRONIC MAIL, INTERNET, AND COMPUTER USAGE**

Computers are indispensable to today's workforce, and combined with more accessible remote and wireless access technologies, e-mail and Internet usage has skyrocketed. The Internet provides employees with quick access to a myriad of vital information. E-mail is a powerful communications tool that lets individuals transmit information both within and outside of the company inexpensively and with lightning speed.

### ***Is inappropriate employee e-mail, computer, and Internet usage really a serious problem?***

Potentially, it can be. Misuse of these electronic tools can create a host of legal problems for an employer. E-mail transmissions are considered "documents" and can be used against an employer in a lawsuit in the same way as any written letter or memorandum. In recent court cases, employee e-mail messages have been presented as evidence in claims of discrimination, sexual harassment, and other illegal activities. Even when the user deletes messages, they do not just "go away" but remain in the company's electronic archives. Deleted messages can be recalled, and an improper message can come back to haunt an employer months or years after the message was first transmitted.

Similar issues arise with general computer use. Employees commonly create and store personal documents on employer-supplied hardware. Furthermore, excessive nonbusiness-related Web surfing can impede business productivity, and improper browsing—for example, viewing pornographic material in the workplace—can lead to charges of sexual harassment or discrimination from employees who are involuntarily exposed to this material.

### ***What steps can I take to reduce improper e-mail, Internet, and computer usage?***

You must develop and communicate a policy regarding online issues, which should apply to all employees with access to these tools. Depending on the specific business concerns and risks faced by your individual busi-

ness, you may additionally consider using some form of electronic monitoring.

***Do employees have the right to privacy in their e-mail, Internet, and computer usage?***

Generally, an employee sending personal e-mails in the workplace and using company-supplied Internet access does *not* have the right to privacy, nor does a right to privacy exist related to Internet use or personal files stored on a company computer. The electronic mail systems and computers at work are the employer's property. As an employer, you have the right to expect that employees will use these tools for proper business purposes, and the right to monitor employee activity for potential violations of this expectation. In addition, because e-mail messages and computer files can be used against a company as evidence in a court of law, you have the right to take steps to minimize the risk that an employee may create documentation that is discriminatory, harassing, or otherwise illegal or improper.

However, there is a limited exception to the general rule that employees have no expectation of privacy in the workplace. Under the laws of some states, if an employer is found to have created for its employees a "reasonable expectation of privacy," employees may be able to legitimately claim that employer screening violates their individual privacy rights.

***How can I protect myself from claims that I violated an employee's reasonable expectation of privacy?***

The best way to protect yourself is to directly let employees know, both verbally and in writing, that they have no right to expect privacy in any of their activities related to company e-mail, Internet, and computer use. Make it clear that all of these systems are company property. Even if you do not currently conduct electronic monitoring, do not promise employees that you will not do so in the future.

***Is it advisable to monitor employee Internet, e-mail, and computer usage?***

There is no single answer to this question; the decision is entirely up to the employer. There are a number of sound business reasons for monitoring. Not only are employers concerned with preventing legal exposure, but they also want to ensure that employees are working productively on company time. In addition, the issue of security is paramount. Organizations wish to protect the safety of their employees and customers, and they have



**BETTER FORGOTTEN: “I RECEIVED THAT E-MAIL, TOO!”**

During discussions about a separation agreement from a manufacturing company, an executive requested details of a benefits package via e-mail. The human resources staff member responding to the request instead sent out a summary of the issues that had led to the decision that the executive leave the company. The wrong document was also mistakenly sent to a wide distribution list within the company. The departing executive negotiated a significantly larger severance package due to the damage to his reputation.

a strong interest in ensuring that their confidential and proprietary information is not being sent out of the company without authorization.

On the other hand, there may be some good reasons *not* to monitor employee e-mails and other computer activity, or at least to use some discretion in the scope of the monitoring undertaken. Excessive surveillance can be damaging to employee morale. Monitoring without notifying employees that they are being monitored may lead to a lack of trust in the integrity of the organization. If the organization decides to monitor employees, it is best to limit the scope of the monitoring to concentrate on proper business concerns and to notify employees of this practice on a regular basis.

In deciding whether to conduct electronic monitoring of employees, a company should first clearly establish what *purposes* it has for doing so, as well as the *extent* of the screening to be conducted.

*Purpose of Screening.* Not all of the reasons mentioned previously will apply to every company. Make a list of the ones that apply to your organization. If you clearly understand the specific business interests that you wish to address, you will be better able to determine the scope of monitoring activities and credibly communicate to employees the reasons for the screening.

*Extent of Screening.* If you decide to monitor e-mail, Internet, and computer usage, carefully consider the extent of the screening you plan to conduct. Electronic screening can vary widely in scope, but generally falls into the following categories:

- ◆ Random spot-checks of messages
- ◆ Restriction of monitoring to usage by individuals suspected of some form of wrongdoing

- ◆ Use of software that scans employee e-mails for certain keywords that are likely to signal a harassing or discriminatory message, or the transmittal of proprietary information
- ◆ Continuous surveillance of all employee computer-related activities

Limit the scope of screening to that which is necessary to achieve your legitimate business purposes. The more intrusive the monitoring, the more likely it will be to have a negative impact on employee morale and perception of the company—especially if you are unable to present a credible explanation of why the company is taking these steps. These problems could potentially outweigh the benefits of any information uncovered by the screening.

### ***How can I adopt and communicate standards regarding proper e-mail, Internet, and computer usage?***

Whether or not you decide to monitor employee online activities, it is critical to develop and communicate a sound policy regarding proper usage of the company e-mail system. Most employees that misuse these tools do not do so intentionally. Especially in situations involving e-mail use, employees often do not understand that these transmissions, by their nature, are *not* private documents and that inappropriate use of the system opens both the company and the individual to potential legal exposure and personal embarrassment. A well-drafted, well-communicated company policy will instill in employees the instinct to think twice before clicking the “send” button.

### ***What should the policy say?***

A sound e-mail policy should contain the following elements:

- ◆ A statement that the employer’s e-mail system is company property, to be used for the purposes of furthering company business.
- ◆ A statement as to whether personal e-mails are permitted, defining any limitations on personal use of the system.
- ◆ An explanation of the rules governing the use of the e-mail, Internet, and computer system. For example, employees should be informed that usage should comply with all applicable laws and regulations and that the system should not be used to:
  1. Transmit or receive confidential or sensitive information

2. Transmit or receive discriminatory, harassing, sexually oriented, offensive, or other illegal or improper messages
  3. Download unauthorized software onto the employer system
- ◆ A statement explaining the business reasons for conducting electronic monitoring (if you intend to do so), as well as the circumstances under which monitoring will take place.
  - ◆ A statement that the employee has no expectation to privacy regarding *any* e-mails; any computer documents sent, received, or stored at the workplace; or any activities related to the Internet.

### **WORTH REPEATING: “BUT I SENT THAT MESSAGE FROM MY LAPTOP!”**

A small medical products manufacturer had communicated a well-crafted policy indicating that the e-mail system and its contents were company property. A salesperson who resigned felt that she did not receive a proper incentive payout and subsequently raised an issue of sexual harassment by another employee, with e-mails as proof. The company reviewed all of the messages between these two employees to find that there was clearly a personal involvement between the two, with inappropriate messages written by both. These salespeople thought that since they were in the field, using their laptop computers, the correspondence could not be traced. They did not realize that all electronic communication traveled through the same company server.

### ***How should I communicate the policy?***

Distribute the policy regularly to all employees. Require all employees to sign an acknowledgment that they received, read, understood, and agree to abide by the rules. If you are adopting this type of policy for the first time, hold employee meetings to explain the rules and answer individual questions.

## **VIOLENCE IN THE WORKPLACE**

No employer wants to think that there is potential for violence in its workplace, but workplace violence is a disturbing fact of life. According to the

National Crime Victimization Survey conducted by the U.S. Department of Justice, there are almost two million assaults and threats of on-the-job violence each year. Common assaults are the most frequent, and aggravated assaults, rapes, and homicides are also on the rise. When workplace violence does strike, the results can be devastating and can include not only harm to employees and/or customers, but also negative publicity, workers compensation costs, OSHA charges, and lawsuits.

Obviously, not all incidents of employee violence can be predicted or prevented, but companies today are expected to take reasonable measures to keep informed of potential threats to the health and safety of employees and customers. Employer liability is most likely to arise when the company has failed to take the appropriate measures to:

- ◆ Screen potential employees for incidents of violence related to their past employment
- ◆ Recognize the warning signs in present employee behavior that may foreshadow potential violence and act appropriately to analyze these signs
- ◆ Take reasonable steps to prevent violent behavior from occurring

The measures taken by the employer must be balanced against employees' privacy rights. This means that companies must take care both to avoid undue intrusion into a worker's private affairs and to limit disclosure of employee confidential information to those individuals within and outside the organization with a need to know.

***What are my rights and obligations as an employer regarding preemployment screening for a history of workplace violence?***

In Chapter 1, we gave guidelines for doing a preemployment background check and discussed ways to avoid liability for negligent hiring resulting from failure to make proper inquiries into a candidate's background. These guidelines are especially applicable to situations involving workplace violence.

***Do I have any obligations if I discover during preemployment screening that an employee has a history of workplace violence?***

In the course of a proper background or reference check on a potential employee, you may discover a history of workplace violence and decide not to hire this individual. Once you have made this decision, refrain from

any further discussion of the details of the applicant's history, either internally or externally. Since your company has not personally experienced any incidents of violent conduct, you do not have the duty or the right to further disclose any information you may have gleaned from background or reference checks. Improperly disclosing this information can lead to defamation or other legal charges. The results of the background or reference checks should simply be retained in the event that the individual reapplies for employment.

### ***What are the warning signs of workplace violence?***

While there is no comprehensive list of predictors that an employee or group of employees is about to turn violent, some common indicators can include:

- ◆ Explicit threats and verbal abuse
- ◆ Inappropriate displays of anger, such as screaming and slamming doors
- ◆ Continually disgruntled attitude
- ◆ Paranoid behavior
- ◆ Exhibition of wide mood swings, unexplained attendance problems, or other erratic behavior

Except in situations involving specific threats, you cannot always tell whether an employee who exhibits one or a few of these characteristics is likely to become violent. After all, everyone becomes angry sometimes, disagrees with decisions, or breaks the rules, and an occasional display of this conduct does not mean that an individual is dangerous. The more often and intensely an employee displays these behaviors and carries out these patterns, the more closely you should watch this individual.

### ***What do I do when an employee exhibits these warning signs?***

As uncomfortable as management may feel in confronting an employee who exhibits the warning signs, you cannot afford to ignore the problem. While there is a chance that the conduct will "go away by itself," the risk is much greater that the problem will escalate into a more dangerous situation. In situations involving ambiguous behavior (i.e., behaviors other than direct threats, which should be dealt with immediately, under company policy), observe the following guidelines:

- ◆ *Have a discussion with the employee.* The manager and/or the HR representative should sit down with the employee and discuss the company's concerns about the behavior. Keep the conversation focused on objective, observable aspects of specific behavior rather than subjective or speculative thoughts. If the employee has been having attendance problems or nodding off to sleep at the job, discuss these behaviors rather than asking, "Are you on drugs?" If the worker has been screaming and throwing objects, say, "You were screaming and throwing objects," rather than, "Are you having personal problems?" Let the employee know that this is not acceptable behavior in the workplace. Document the meeting in writing. Not only will a written record help you in the event that you have to eventually terminate this employee, but if this behavior escalates to violence at some point, it will enable you to prove that, as an employer, you recognized and attempted to deal with the problem.
- ◆ *Do not become involved in "managing" the problem.* During the course of the discussion, the employee may reveal specific problems that he or she may have that are contributing to the behavior. Rather than becoming involved in hearing the details of these problems, be prepared to refer the individual to outside help, whether through a formal employee assistance plan (EAP) or other outside counseling source (see Chapter 7 on benefits). If you do not have an EAP, you can find an outside counselor through your benefits or workers compensation insurance provider. Employers are not trained to diagnose and deal with the multitude of complex problems that employees may face, nor are they qualified to determine whether an individual has the potential to become dangerous. Often, employees who exhibit high-risk behavior will not admit that they have a problem, or even that they are doing anything wrong.
- ◆ *Keep results of investigations confidential.* As you investigate and deal with an employee's high-risk behaviors, keep all information learned from any source completely confidential, and do not share any details with anyone who does not have a *need to know*. This will usually be limited to the EAP, a member of the human resources department, company attorneys, the employee's manager, and/or any outside counselor who is involved. Do not encourage, or take actions that encourage, gossip or speculation about the employee. When investigating an employee's behavior, limit your inquiries of coworkers to *specific facts* about the behavior rather than asking other employees their opinions on what might be causing the conduct. For example, instead of asking, "Do you think Mary is cracking under the stress here?" you might ask, "Have you observed Mary having problems with her supervisor?"

***Can I force an employee to undergo psychological testing and/or counseling as a condition of employment?***

It will be easier for you to do so if your organization has developed and communicated a clear written policy against workplace violence, and includes in the policy a provision mandating referral for employees who have displayed behavior that the employer strongly believes may lead to violence.

***How can I prepare my company for the occurrence of an incident of workplace violence?***

No matter how vigilant you are in spotting and dealing with potential trouble situations, there is no way to eliminate all workplace violence. With the help of attorneys, trauma and security experts, and human resources professionals, develop a comprehensive safety plan for dealing with incidents of workplace violence. This plan should identify the following:

- ◆ Emergency crisis procedures that outline a chain of command for emergency response
- ◆ Counseling resources for employees, victims, families of employees and victims
- ◆ Steps to reestablish a secure workplace and to determine when the workplace is sufficiently safe for employees to return to work
- ◆ A public relations team that will handle internal and external communications

The way in which you, as an organization, respond in the face of an emergency will be critical in reestablishing a sense of safety among employees and generating goodwill from the community as a whole.

## **SUBSTANCE ABUSE IN THE WORKPLACE**

As with workplace violence, the issue of substance abuse in the workplace is an unpleasant one to face. Some employers will deny that the problem exists at their organizations; others might feel certain that they would be able to recognize the problem in employees, when and if it occurred. The costs of substance abuse at work, however, are staggering, and can be quite a revelation for those employers in denial about the problem.

The U.S. Department of Labor estimates that drug and alcohol usage in the workplace costs employers between \$75 billion and \$100 billion

### **WORTH REPEATING: MEETING THE FACE BEHIND THE PROGRAM**

An employer in a service industry had a representative from the employee assistance program come in to speak briefly to employees during their benefits orientation. During this introduction to EAP benefits, human resources representatives would leave the room. An EAP counselor also spoke at least twice a year to supervisors, providing them with information on spotting and handling the warning signs of serious employee problems. These introductions put a face and familiarity behind the program and made it user-friendly—not merely a policy on paper.

annually in lost time, accidents, and health care and workers compensation costs. It is estimated that approximately 65 percent of on-the-job accidents are attributable to drug or alcohol use. For this reason, it is important that all employers understand the consequences of drug and alcohol use at the workplace and take appropriate steps to prevent and eliminate the problem.

#### ***How can I reduce substance abuse in the workplace?***

The rights and obligations of employers in this area are covered by individual state laws and, if applicable, the Drug Free Workplace Act of 1988 (DFWA). As a preliminary step, determine whether your business is covered by this legislation. The DFWA applies to some federal contractors and all federal grantees. Employers who do not have or do not intend to apply for federal contracts or grants are not covered by these drug-free workplace requirements. In addition, even if the act applies, it does not apply to the entire company; only employees working on the covered grant or contract must comply.

#### ***What are the requirements of the Drug Free Workplace Act of 1988?***

The law requires that covered companies take the following actions:

- ✓ Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace



and specifying the actions that will be taken if an employee violates this policy.

- ✓ Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed on employees for drug abuse violations.
- ✓ Notify employees that as a condition of employment on a federal contract or grant, they must a) abide by the terms of the policy statement and b) notify the employer, within five calendar days, if they are convicted of a criminal drug violation in the workplace.
- ✓ Notify the contracting agency within ten days after receiving a notice that a covered employee has been convicted of a criminal drug violation in the workplace.
- ✓ Impose a penalty on—or require satisfactory participation in a drug abuse assistance or rehabilitation program by—any employee who is convicted of a reportable workplace drug conviction.
- ✓ Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the DFWA.

#### **WORTH REPEATING: “WHERE DO I GO FOR THE TEST?”**

When implementing a drug testing program, make certain that the provider meets your needs. If you are an employer with multiple locations, you do not have to find labs in many locations. Testing companies will coordinate multiple locations for you. Verify that the locations are accessible for your prospective job candidates and employees and that the environment and service reflects your standards. You can also look for a company that will set up testing and provide results over the Internet via a secure connection.

#### ***What substances are covered under the DFWA?***

The DFWA applies only to defined controlled substances. It does not cover abuse of prescription drugs or alcohol.

***What happens to employers that fail to comply with the provisions of this legislation?***

Employers that are covered under the DFWA that do not comply with its requirements are subject to certain penalties, which can range from cancellation of the grant or contract to being barred from participation in federal contracts and grant or award proceedings for up to five years.

***What steps should employers that are not governed by this law take to reduce substance abuse in the workplace?***

Employers not required to comply with the DFWA have more flexibility in handling employee substance abuse issues, but it is still advisable for all employers to take proactive steps to maintain a drug- and alcohol-free working environment. The Department of Labor has created a strategy known as “Working Partners” that is aimed at maintaining a drug- and alcohol-free workplace for all companies. This approach recommends the following actions:

- ✓ Write and communicate a clear and comprehensive policy prohibiting the use of drugs and alcohol at the workplace. The document should clearly state why the policy is being implemented, describe the behaviors that are prohibited, and explain the consequences for violating the policy.
- ✓ Train supervisors in the organization’s drug-free workplace policy, the supervisor’s specific responsibilities in implementing the policy, and ways to recognize and deal with employees who have job performance problems that may be related to alcohol or drug abuse.
- ✓ Educate employees about the details of the company policy and the dangers inherent in drug and alcohol abuse, as well as the types of help available for employees with substance-related problems.
- ✓ Provide assistance for employees with substance abuse issues, either through company-sponsored EAPs or by providing an accessible way (such as help lines) for employees to get information about treatment programs.
- ✓ Establish a drug testing program. This action involves determining whether drug testing is appropriate for an individual employer and, if so, implementing a sound, legally compliant program.

***Should I conduct employee drug testing?***

Drug testing is required by law for certain positions. For example, the Department of Transportation mandates these tests for individuals who operate motorized vehicles as part of their jobs.

However, most drug testing is optional. Drug tests have traditionally been—and still are—controversial. Some employers believe that the risk of employee death and disability, and the cost to business of drug and alcohol abuse, are more important than the personal freedoms of employees. Other organizations believe that such testing is an undue intrusion on personal liberties, and the tests are not infallible. Each organization must carefully weigh the pros and cons of drug testing in light of its individual circumstances and the results it wants to achieve through drug testing.

***What factors should I consider in developing a drug testing program?***

Before implementing a drug testing program, carefully evaluate your specific purposes for conducting the program. You can then develop policies and procedures that will accomplish your objectives without risking damage to employee morale from excessive intrusions on privacy. Among the factors that you should consider are:

- ◆ *Who will be tested?* Will all employees be subject to the tests, or just employees in safety or security-sensitive positions?
- ◆ *When will tests be conducted?* Will the tests be limited to preemployment screening, or will they be conducted during the course of employment as well? If postemployment tests are conducted, will they be random or periodic? Will they be based on reasonable suspicion or for cause? Will they be done postaccident or postrehabilitation?
- ◆ *Which drugs will be tested for?* Will testing be limited to the substances for which many federal government agencies require testing (i.e., marijuana, opiates, amphetamines, cocaine, and PCP), or will testing be broader, covering alcohol and prescription substances as well?
- ◆ *How will tests be conducted?* A number of tests are available, including urinalysis, saliva tests, hair tests, breath alcohol tests, sweat patches, and blood tests. The laws in individual states vary as to types of testing that may or may not be performed. All federal drug testing programs must conduct tests in accordance with the Guidelines for Federal Workplace Drug Testing Programs published by the U.S. Department of Health and Human Services.
- ◆ *What state and federal laws apply?* Employers should completely familiarize themselves with the federal laws and all relevant state laws regarding drug testing. Before implementing any program, contact an attorney to ensure compliance with these regulations.

## MONITORING OTHER WORKPLACE DISHONESTY

There may come a time when your company experiences other acts of employee dishonesty, such as theft of company property or the property of other employees, or fraud. Depending on the nature of your business, you may run a high risk of exposure to these violations of trust. How far can you go in using other techniques—such as the search of employee property or employees themselves, video surveillance, and telephone monitoring—in order to root out the wrongdoer or prevent these incidents from occurring in the first place? You should again take into account whether the actions you want to take are reasonable and necessary for proper business purposes and balance this consideration against the privacy expectations of your employees.

### *Do I have the right to conduct searches of employees or their property?*

Generally, employers do have this right, provided that they have not created a reasonable expectation of privacy for employees. The best way to ensure that employees do not have a reasonable expectation of privacy is to create policies that state that the company has the right to search their belongings or persons. The policy should also spell out the types of items or places that the employer may search, such as persons and belongings, automobiles parked on company premises, work areas, and lockers. If the company intends to conduct random searches, the policy should also state this.

### *Is it advisable to conduct random searches of employees?*

In businesses where there is a high incidence of employee theft, such as retail or manufacturing industries, random searches are common. For other types of businesses, random searches may create more problems than they solve, especially in the areas of employee morale and productivity. For this reason, it is best for the companies in “lower risk” businesses to limit searches to situations where there is “probable cause” or reason to believe that they will find what they are searching for.

### *What should I consider when conducting a “probable cause” search?*

First, consider what factors give you reason to believe that a certain object will be found on a particular employee. Your decision should focus on factors that you have seen or heard about, or on which you have a legiti-

mate basis to suspect an employee or group of employees. Never rely on any preconceived notions you may have about a person's race, gender, economic background, or other illegal or inappropriate criteria, or you may face charges of discrimination or harassment.

You will also need to consider where you will search. This search should focus on where you reasonably expect to find the item in question. Do not use a search to go on a "fishing expedition" to find instances of wrongdoing that you have no reason to legitimately suspect. If a television manufacturer suspects an employee of stealing from its inventory, the company may search her car, or perhaps her locker if it is large enough to hold a TV product, but it should not search her person to determine whether she is also carrying illegal drugs.

**BETTER FORGOTTEN: "YOU FOUND WHAT IN MY LOCKER?"**

A hotel in a midsize city adopted a policy of random locker searches, followed by termination of employees with company property in their lockers. The random search policy was developed and conducted by human resources. Even though the policy was communicated clearly, the resulting mistrust of HR led to serious morale problems. Human resources quickly developed a reputation as the place employees went only if they were being fired!

***Suppose the employee objects to the search?***

When confronted with a search of their personal belongings, employees may object on the grounds that the area the employer wants to search also contains confidential items that the employer has no right to see. For example, an employer may want to search an individual's briefcase for a handgun, but the owner of the briefcase may state that it contains confidential paperwork. One way around this problem would be to give the employee the option of having the briefcase searched by an independent third party. This third party would only tell the company whether there was a handgun in the briefcase, supplying no further details of its other contents.

If the employee refuses to consent to any search, you will generally have grounds for discharging the individual. In these situations, carefully document the circumstances of the attempted search and the employee's

conduct and responses. Do not attempt to physically restrain the employee or to detain the individual against his or her will. This may result in assault, harassment, or false imprisonment charges. If you believe that the employee is trying to remove something from the premises that will cause great damage to the company if removed—for example, a very expensive piece of equipment or confidential company information—it may be appropriate to detain the individual for a short period of time until law enforcement arrives. Scrupulously document your reasoning and the actions taken.

***Can I monitor regular mail addressed to the employee at the workplace?***

Even though federal law prevents the obstruction of mail delivery, according to the U.S. Postal Service, mail is “delivered” when it arrives at the premises of the employer. Therefore, employers are entitled under federal law to read personal employee mail sent to the workplace. Under the laws of some states, however, this type of activity can constitute invasion of privacy.

It is not advisable to read employee mail unless you have a sound and legitimate basis for doing so. Companies that believe they have a proper business purpose in monitoring personal mail should inform employees of their intent to monitor, and state that they have the right to review all mail, even that which is marked “personal” or “confidential.” If, when reviewing an item of employee mail, you discover that it is truly personal and unrelated to anything for which you are screening, stop reading. Never disclose any personal information that you learn from monitoring personal letters.

***Can I listen in on employee telephone conversations?***

In certain situations, an employer is permitted to monitor employee telephone conversations. While telephone monitoring is generally restricted under federal and state wiretap laws, there is an exception to these laws for secret monitoring “in the ordinary course of business.”

There is no clear-cut definition of what constitutes the “ordinary course of business” for monitoring purposes, and different states have different standards for determining how far an employer can go. The ordinary course of business can encompass what is reasonable for a particular job or customary in an industry. It is common and acceptable, for instance, for employers to monitor customer service providers and telemarketers to assess their performance. When courts look at whether an individual instance of monitoring is legal, they will examine the extent of the monitoring and

whether it was reasonable to achieve a proper business purpose. Proper business purposes have included allowing businesses to listen in on conversations when they believed employees were disclosing confidential company information to outside parties, and permitting the monitoring of calls after an employee was heard denigrating his supervisors.

Under some state laws, it is also legal to monitor even those employee telephone conversations that do not fall under the “ordinary course of business” standard, provided the employer obtains consent. The standards concerning what constitutes “consent” vary by state. Some states deem consent to exist if only one party to the conversation agrees to the monitoring. Other states require the consent of both parties. Before you undertake any telephone monitoring, it is best to consult counsel as to the laws of the specific state in which your work site is located *and* the state of the party that the employee is calling.

Even if the monitoring you are conducting is permissible by law, this does not entitle you to listen in on all employee telephone calls. Under federal law you *must* stop monitoring a call when you determine that the nature of the call is personal. To avoid invasion of privacy claims, you must also keep confidential any personal information you discover from the call.

If you plan to conduct telephone monitoring, have a clearly stated policy informing employees that you reserve the right to listen in on telephone calls.

### ***Can I conduct video surveillance of employee workplace activities?***

Yes, but you should have a legitimate reason for the surveillance, and you should limit the video monitoring to places where the activity you want to prevent or gather evidence on is likely to take place. Avoid areas where the employee can reasonably expect privacy. If you are concerned with preventing employee theft, you might use video surveillance in the warehouse or display area. For security reasons, you may want to place video cameras at exits and entryways and other high-risk areas.

Do not place cameras in break areas, bathrooms, and employee changing rooms. Some states specifically prohibit monitoring in these “private” areas, but even in states without these specific laws, this type of intrusive surveillance can lead to invasion of privacy claims and be devastating to employee morale. In addition, use video equipment that does not have sound-recording capability, or else you will be subject to the same restrictions as apply to telephone monitoring. Before investing in and installing any type of surveillance equipment, it is advisable to consult with an attorney.

### ***Can I give my employees a polygraph test?***

As a general rule, private employers cannot require or request that an employee take a lie detector test, and they cannot fire an individual who refuses to take a test. Use of polygraphs is covered under the Employee Polygraph Protection Act (EPPA), which limits the polygraph testing to specific circumstances. The EPPA does not apply to government employees or to private individuals hired by the federal government to engage in certain national security activities. Employers covered by the EPPA must prominently post a notice explaining employee rights under the law. Some employers desire to use preemployment polygraph tests to verify the details provided by the applicant. Under the regulations, employers cannot do preemployment polygraph testing, with the exception of security services firms or pharmaceutical manufacturers and distributors.

If you want to test employees that you suspect are stealing from the company, you may only test those employees with access to the stolen property, and even then only with their voluntary consent. The EPPA also sets out guidelines and standards concerning the length of the test and the conduct of the test. Some states have passed additional laws related to employer polygraph testing. If you believe that your company falls under the limited exemptions of the EPPA and you desire to test any of your employees for any reason, contact legal counsel to discuss your responsibilities under federal and applicable state laws.

## **CONDUCTING EMPLOYEE INVESTIGATIONS**

To obtain further details about any form of employee misconduct, employers will usually need to conduct an investigation. It is critical that companies understand how to conduct effective investigations, since improper investigations expose the company to claims of discrimination, invasion of privacy, false imprisonment, and other charges. Although the details and extent of investigations will vary with the circumstances, there are certain basic rules that apply to all of these actions.

### ***When do I need to conduct an investigation?***

In situations involving fraud or theft, the employer may need to investigate to uncover the identity of the wrongdoer or, if the identity is already known or suspected, further evidence as to the illegal conduct. In other circumstances, such as allegations of harassment, discrimination, drug use, or potentially violent behavior, the investigation may stem from a complaint by another employee. Some problems can be resolved quickly,



without a formal investigation. In deciding whether to conduct an investigation, consider factors such as:

- ◆ The complexity of the issues involved
- ◆ The number of employees involved in the complaint
- ◆ The level of seriousness of the reported conduct
- ◆ Whether more fact finding must be done before the company takes action

### *Who should conduct the investigation?*

Again, the answer depends on the nature of the offense and the expertise of company employees. Some companies have employees in the legal, security, or human resources departments who are familiar with the proper method of conducting an investigation. If you do not have this in-house expertise, it is advisable to hire an attorney or other independent investigator to perform the investigation or, at a minimum, consult with an attorney before proceeding.

When using an outside investigator, you may be subject to the provisions of the Fair Credit Reporting Act, which could trigger an obligation to get permission from the accused individual for the third party to conduct the investigation. Professional outside investigators can generally provide the required consent forms.

#### **BETTER FORGOTTEN: “DID YOU TALK TO EVERYONE?”**

A customer service representative was brought in to human resources and told that she was being fired for making personal phone calls using a manager's telephone access code. HR had the records showing that the calls were made to the employee's home from her desk, during her shift, using the code. After the employee composed herself, she stated that she had a sick relative at home and had expressed her concern to the manager, who had given her a code with permission to make the calls during work.

### *How do I conduct a proper investigation?*

If the employees in question are covered by a union collective-bargaining agreement, the agreement may contain specifics about how to conduct

employee investigations, and it is important that employers adhere to these procedures. In general, there are three steps to any investigation:

1. Planning
2. Fact finding
3. Analysis and conclusions

***How should I plan for the investigation?***

Your goal should be to develop an objective and fair plan that is designed to gather the necessary information without violating the rights of the accused or suspected individuals. First, you will need to determine who, within or outside the company, should conduct the investigation. Assemble all relevant documentation, such as the employment files of the employees under investigation; written documents such as letters, memorandums, e-mails, expense records, or time sheets; and any company policies that pertain to the conduct involved. Speak to legal counsel and understand the relevant laws that apply to both the alleged misconduct and the investigation of the misconduct, and determine whether it is necessary or advisable to suspend the accused employee with or without pay until the investigation is resolved. Determine what other resources may be necessary, such as translators for non-English-speaking employees who will be interviewed, law enforcement for situations involving illegal activities, and public relations assistance, if the situation is likely to cause the employer negative publicity.

***Should I send the accused employee home, with pay, pending the investigation?***

If the accusation centers on a violent act, or other activity that could threaten the safety of employees or customers or significantly damage the morale or effectiveness of coworkers, it is advisable to keep the accused away from the premises until the matter is resolved. It is significantly less costly to suspend an employee with pay than suffer potential threats to safety or productivity. In other circumstances, there is usually no reason the accused cannot continue to report to work until a final determination is made.

***During fact finding, who should be interviewed?***

The answer to this question will vary with the situation, but generally your investigators will interview:

- ◆ The person(s) making the complaint (if applicable)
- ◆ The person(s) accused of the misconduct
- ◆ Witnesses to incidents relevant to the misconduct
- ◆ Supervisors of the person(s) making the complaint and those accused
- ◆ Individuals that the complaining party or the accused have requested be interviewed

To avoid claims of invasion of privacy, interview only those people who are involved in or may have direct knowledge of the conduct being investigated.

### *How should the interviews be conducted?*

All interviews should be conducted in a private setting, to ensure confidentiality and avoid embarrassment. It may be more comfortable and afford more privacy to conduct employee interviews off-premises. Inform all parties interviewed about the purpose of the investigation, the reason you are interviewing them, the seriousness of the investigation, and the importance of their full cooperation. In addition, assure them that there will be no retaliation against any participant in the investigation. Often, participants in an investigation are concerned about the confidentiality of the information they provide. While you cannot assure these individuals that you will not share any information, you should inform them that all information will be kept as confidential as possible and will only be disclosed to those with a “need to know.”

Treat all persons interviewed in a dignified and professional way. Avoid jokes or threats, and do not provide personal opinions about the information discussed. Do not physically restrain employees or tell them that if they don’t cooperate, they cannot leave the workplace. These restrictions can lead to charges of false imprisonment. It is proper, however, to make cooperation a condition of an individual’s continued employment.

Ask questions that are relevant to the substance of the investigation. Do not allow the interview to deteriorate into a general discussion about problems at the company or personality issues with any of the parties involved. Focus questions on the specific behaviors and conduct that are central to the investigation, and ask open-ended rather than leading questions. For example, if investigating a sexual harassment complaint, you may want to ask, “Have you observed any tension in the department between

Mr. X and Ms. Y?” rather than saying, “Do people in the department talk about Mr. X touching Ms. Y?”

Distinguish facts from speculation and focus on the facts. Limit your conversations with witnesses to what they personally know or have seen, rather than what they heard through the grapevine. Conclude the interview by thanking each participant for cooperating, and confirming the company’s policies concerning confidentiality and nonretaliation. Encourage witnesses and complaining parties to report any relevant information that may later occur to them, and to come forward if they witness or experience any future incidents of the conduct being investigated.

Most important, document all interviews. Take careful notes and prepare written statements summarizing each interview. These statements should include the substance of the information obtained from employees, as well as any special instructions given to them during the course of the interview. Ask participants to sign and date the summaries of their individual interviews. If the interviewed individual refuses to sign this statement, at a minimum have the interviewer sign and date it.

### *What should I do after I gather the facts?*

You must analyze the facts, reach a conclusion, and take action. Often, it is difficult to reach a conclusion after an investigation because the information gathered will conflict. Many investigations come down to assessing the credibility of the participants, examining the facts, and determining the motivations of the individuals. However, it is appropriate to evaluate all of these factors and reach an informed conclusion to avoid employee perception that the company “does nothing” about complaints.

In certain situations, you may decide that the evidence presented does not allow you to reach a firm conclusion about what took place. Even so, it is important to warn the accused to avoid similar conduct in the future, and to encourage the complaining party to report any further incidents.

When the investigation yields a more conclusive result, you must determine the action to be taken. This will depend on a number of factors, including whether any policies or procedures were violated, how similar situations had been handled in the past, any legal requirements for handling the situation, and whether there are special circumstances that warrant handling the matter more leniently or strictly than it might otherwise be handled. An employer’s actions can encompass a wide range of options, including:

- ◆ Verbal warnings
- ◆ Written warnings

- ◆ Probation or suspension
- ◆ Demotion
- ◆ Transfer
- ◆ Termination of employment

Once you have analyzed the facts, reached a conclusion, and determined what actions to take, you should inform both the accused and the complaining party of the results of the investigation. It is neither necessary nor advisable to inform witnesses of the results and conclusion. If witnesses ask about the outcome of the investigation, tell them that the matter is confidential and thank them for their cooperation.

### ***Should I maintain documentation of the interview?***

The investigators should prepare a report of the investigation, summarizing the issues involved, the steps taken in the investigation, the substance of each witness interview, and the findings and actions taken. This report should also include any signed statements of participants in the process.

It is important to recognize that every document prepared that relates to the investigation may one day be admitted as evidence in a lawsuit. For this reason, all documentation should be factual and objective. In preparing your documentation, remember that your goal is to show a jury or other third party that you took the complaint seriously, responded appropriately, and did your best to reach an informed and responsible conclusion and take the necessary actions. This report will also be useful for reference if the same, or similar, misconduct occurs again in your workplace.

# Termination and Discharge

## How Do I Fire an Employee Legally and Humanely?

**W**henver you hire an employee, you have high hopes that you have made a good decision and that the employment relationship will be a long and mutually beneficial one. Sometimes, however, the arrangement does not work out as anticipated and you may want to end the employment relationship and hire someone more suitable for the position.

Firing an employee is never easy. Since it is difficult to tell people that they are going to lose their jobs, some employers will ignore a situation until it gets out of hand—and then suddenly and swiftly discharge the problem employee. This type of rash action can have painful consequences. Wrongful termination lawsuits are common, expensive, and time-consuming. In addition, you must consider that every time you terminate a worker, your remaining employees will be watching your actions very carefully. If you are perceived to be arbitrary, heartless, or unfair, employee morale will suffer, along with your reputation in the community as a desirable employer.

While firing in haste can create legal liability, taking the opposite approach and being afraid to terminate employees who are not working out

can be just as hazardous for a business. As organizations face the challenge of developing a leaner workforce to remain competitive, it is more critical than ever to retain the flexibility to replace problem employees with those that will make positive contributions.

Do not let fear of legal action paralyze your decision making. There is no way to completely insulate your business from lawsuits; some individuals will sue whether or not they have a legitimate case. The practical goal is to minimize the risk of liability and negative employee perceptions—which you can do by developing, implementing, and consistently adhering to a system based on sound policies, guidelines, and procedures to support your terminations. This chapter will guide you in making the right termination decisions and carrying them out in a way that will decrease your potential exposure.

## THE TERMINATION PROCESS

Every termination process must include the following four elements:

1. Determining whether the employee can be properly terminated
2. Ensuring that the proposed termination is adequately documented
3. Conducting the termination responsibly
4. Promptly handling follow-up matters

Never act rashly. Discipline your organization to follow these four steps *every time* you consider terminating an employee.

### ***Can't an employer fire and rehire people as it wishes?***

Not really. The laws concerning what constitutes wrongful discharge vary by state, but there are certain instances where termination will always be considered illegal. In addition, there are other variables that will have a bearing on whether a particular termination is appropriate, such as whether there is a written employment contract, the wording of any employment handbook or policy manual, and the prior actions and practices of the company.

### ***What about "employment at will"?***

Some state laws support an "employment at will" doctrine, which maintains that both employer and employee are free to terminate the employment relationship at any time and for any reason (as long as that reason is

not illegal). Increasingly, however, the concept of employment at will has been eroded in the courts, and even companies located in so-called “at will states” have incurred liability when the circumstances of the termination suggested that the fired employee was wronged in some way. It is therefore essential to adopt sound termination practices no matter where your business is located.

***What do I need to consider in determining whether I can terminate an employee?***

First, you need to determine whether your reasons for conducting the termination are proper and legal. There are many legitimate reasons why you might consider firing an employee. He may not be performing the job satisfactorily. She may have behavior or attitude problems, such as excessive absences or lateness or lack of cooperation with coworkers, which are affecting productivity and morale. The individual may have engaged in illegal or unacceptable activities such as drug use on the job or threats of violence. Or your business may simply be moving in a direction that requires that you replace an existing worker with someone with a different skill set.

On the other hand, there are some reasons that will always be considered inappropriate and illegal. As discussed in Chapter 8, firing an employee for reasons involving discrimination related to age, sex, religion, ethnicity, or other protected-class status is against the law. It is also improper to discharge a worker in retaliation for that person’s reporting a violation of an antidiscrimination, harassment, or safety law, for serving on jury duty, or in order to deny retirement benefits. Individual states have additional laws regarding employment terminations. You will need to be aware of the applicable laws of both the state where your company headquarters is located and that in which the employee works.

Once you have determined that your reasons for firing are appropriate, you must consider whether there are additional factors that will complicate the termination process. Each time you conduct a termination, ask yourself the following questions:

- ◆ Can this termination reasonably be interpreted as being discriminatory or retaliatory? In other words, you may want to fire an individual for poor performance, but if this same individual recently complained of an instance of sexual harassment in her department, it is likely that she will claim that she was terminated because of her complaint.



- ◆ Did you make *verbal promises* to the employee about her employment status or term of employment? It is never advisable to make representations such as, “You will have a job here as long as we are profitable,” or “You will only be fired for good reasons.”
- ◆ Is there an *employment agreement* between the company and the employee? If so, you will need to carefully review the agreement to ensure that the termination does not violate the company’s contractual obligations. Many employment agreements spell out the term of employment, as well as reasons and procedures for discharge, and provide for severance payments or other penalties if the contract is terminated.

If you answer yes to any of the questions above, it is still possible to terminate an individual for a legitimate cause, but you will have to take further steps to set the right legal groundwork to support your actions. Consult an attorney to help you with this process.

If your reasons for the firing are proper and you have answered no to all of the previous questions, you still have more work ahead of you before you can discharge the employee. There are very few instances in which you can safely terminate an employee “on the spot.” These include extreme situations involving violence or threats to harm others; fraud, significant dishonesty, or other criminal activity; possession or use of alcohol or drugs in the workplace; or unauthorized disclosure of trade secrets. In other circumstances that do not involve immediate threats to the company, its employees, or its customers, you will need to take the time to ensure that you set the stage for the termination through adequate documentation and communication.

### ***How do I ensure that the proposed termination is satisfactorily documented?***

In Chapter 3, we discussed the progressive disciplinary system and how to document performance and behavioral problems. It is critical that before conducting a termination, you make sure there is adequate documentation of the reasons for termination and of the fact that the performance issues have been communicated to the employee. Because you never know who will file a suit for wrongful termination, it is prudent to look at every employee termination as a potential lawsuit and have the data available for each discharge to defend yourself and demonstrate that you acted responsibly and within the law.

When you are considering a termination, review the individual’s employment file to ascertain whether the following documentation is in place:

- ◆ Records clearly noting and explaining incidents of unacceptable performance or conduct, and that show that the employee was notified of these deficiencies
- ◆ Documentation reflecting that the employee was notified that his or her employment may be terminated if improvements did not occur
- ◆ Documentation that the employee was offered a reasonable opportunity within a reasonable time frame to make the necessary improvements, and that the improvements did not occur

### **BETTER FORGOTTEN: DON'T "PAD" THE FILE**

Beware of managers who are out to get an employee by completing write-ups for every minor infraction, and those who pressure you to speed up a disciplinary process. Don't let individual managers change your system. They may not see the big picture, and using inconsistent procedures can get you into trouble down the line.

If any of these elements are missing from the file, it is better to hold off on the termination until the file can be documented properly. While the prospect of postponing a termination can be inconvenient, the costs of acting too hastily are potentially far more serious.

### ***How do I prepare for and conduct the actual termination?***

As a guiding principle, keep in mind that no matter what the specific circumstances, it is important to treat the departing employee in a dignified manner at all times during and after the discharge. Employees who feel humiliated during the process are more likely to spread damaging comments to others or take legal action than those who believe they were respected. The way in which you conduct a termination sends a message to all employees—let that message be that you are a responsible and concerned employer.

- ◆ *Scheduling the Termination Meeting.* Schedule the meeting when the employee will be at work, and not on leave or vacation. Friday afternoon is the worst time to fire. Sending the employee home for the weekend fresh from the shock of losing a job is heartless, and it does not give the company

**WORTH REPEATING: LET THE BOSS KNOW**

A midsize company made it common practice to let the president know in advance of termination actions at all levels. This way, when and if the terminated employee contacted the president, he was not blindsided and could respond based on the facts.

time to assess and control the situation if there is negative fallout among other employees. Conducting the termination earlier in the week, at the end of the day, gives the employee time to emotionally prepare for the weekend ahead and allows the individual to leave the office without having to give embarrassing explanations to colleagues.

Plan to have the meeting in a quiet and private place, such as a supervisor's or human resources representative's office. If no private office is available, use a conference room. Have two people present for the termination discussion, usually the individual's manager and either a human resources professional or another manager who has had contact with the employee. This way you will have a witness if the employee later disputes what was said or done at the meeting.

Limit information concerning the discharge to those employees with a "need to know," such as discharged employees' managers, functional area heads, and the appropriate legal and human resources representatives. Make sure these individuals understand the need to keep the matter totally confidential. If the affected employee feels he was the "last to know" about his termination, this will only elevate resentment.

◆ *Conducting the Termination Interview.* How you open the meeting will set the tone for everything that follows. Although you may be anxious about the unpleasant task before you, you must be clear, courteous, and direct. Do not engage in extraneous conversation, but state the fact that you are terminating the individual's employment and offer the reasons for your decision.

It is common that even when you state the purpose of the meeting directly, employees may not fully understand that they are being fired. Give them a chance for the message to sink in, and be sure they comprehend the action you are taking. You will want to give people the chance to ask questions, but do not let the session become argumentative or allow an employee to revisit the details that led to the termination. Gently explain that the decision you have made is final, and move on to the rest of your agenda.

Different people react to bad news in different ways. Some may cry; others may get angry or defensive; some may say nothing or show no emotion. Allow emotional workers to regain their composure before moving on. Do not respond to anger by getting angry yourself. It is your role to stay in control of the meeting.

You will then want to explain about COBRA and other benefits (see the next section on posttermination) that are available to assist the employee in transition to new employment. Give the employee a written description of these benefits or say that details will be mailed in the near future. Provide the name of the proper person to contact if there are questions about transition benefits. Collect any company property, such as security ID cards, company credit cards, or file cabinet or office keys. Finally, document the termination meeting, including the date, time, attendees at the meeting, and major points discussed, and place a copy of the documentation in the individual's employment file.

◆ *Collecting Personal Belongings and Leaving the Premises.* After the meeting, allow the employee to return to his workspace to gather personal belongings and any additional company property to be returned. Again, permitting the individual to retain his dignity is key. While it is usually advisable for terminated employees to leave company premises as soon as possible, this is not necessary in all situations. If there is no valid reason for security concern, do not add insult to injury by sending them back to their desks accompanied by uniformed security guards or escorting them off the premises. Use alternative methods of addressing security issues, if available, such as deleting employee access codes to the company's computer systems, remotely, while the termination meeting is taking place.

### ***What if the employee requests to resign instead of being fired?***

Occasionally, an employee may feel that it is less of an ego blow to resign than to have the employment file reflect a termination. There is no reason not to agree to this request. When you agree to a resignation in lieu of a termination, do not attempt to challenge the individual's collecting unemployment benefits. The unemployment agency will view this type of resignation as a discharge and almost always allow the worker to collect.

## **POST-TERMINATION COMPENSATION AND BENEFITS**

When you terminate an individual's employment, there are certain compensation and benefits that you must offer and others that are optional. Before the actual discharge meeting, make a list of the required and op-

**BETTER FORGOTTEN: “WE’LL ONLY FIRE SOME THIEVES!”**

A small products manufacturer had a policy stating that all employees caught taking company property would be automatically terminated. Yet, when it conducted random locker inspections and found stolen property, it only fired those workers that the plant manager disliked. One of the terminated workers filed a discrimination charge against the company. Apply your discipline and termination policies consistently.

tional items that you will provide and review them with the employee during the termination meeting.

***What post-termination compensation and benefits am I required to offer to discharged employees?***

- ◆ *Final Paycheck.* No matter what the circumstances of the termination, you are obligated to pay the employee for time worked through the date of discharge. State law varies as to when the final check must be delivered; understand your obligations before acting. You are not permitted to “offset” amounts that the employee owes you against wage or vacation time payment. For instance, if the final paycheck amount is \$500, but you claim that the employee owes you \$100 for failing to return a company-provided cell phone, you cannot deduct \$100 from the paycheck or withhold pay until the phone is returned. All such matters must be settled separate and apart from the payment of wages.
- ◆ *Vacation Pay.* The employee is entitled to pay for all earned but unused vacation time. Include this amount in the final paycheck.
- ◆ *Stock Option, 401(k), Pension, and Non-Health Insurance Benefits.* If the employee has vested stock options, 401(k) or other retirement savings, or pension benefits, provide instructions for continued participation in the plan (if allowed under the plan) or for distribution of funds. If the company’s life insurance or other non-health-related insurance plans offer participants the option to convert to individual coverage, inform the individual of this feature.
- ◆ *Continuation of Health Insurance Coverage (COBRA).* The Consolidated Omnibus Budget Reconciliation Act (COBRA) requires employers with

twenty or more employees (with the exception of plans provided by the federal government and certain church-related organizations) to provide the opportunity for continued health insurance coverage for employees who lose their coverage due to a “qualifying event” such as termination of employment. Generally, you must provide the same level of benefit to any employee, spouse, or dependent who was covered on the date of termination. The period of coverage continuation is usually eighteen months, but it may be extended up to thirty-six months in certain disability situations. Employees elect to continue the coverage at their own expense, at a rate no greater than 102 percent of the cost of the premium.

COBRA provides certain specified notification and action requirements, as follows:

Key Event	Time Frame
Company must notify plan administrator of a “qualifying event.”	Within 30 days of termination or other “qualifying event”
Plan administrator must notify individual of his rights under COBRA and the period for electing to participate.	Within 14 days after notification to plan administrator
Individual must notify company of his election to participate under COBRA.	Within 60 days after receiving notice from plan administrator
Participating individual must pay initial premium.	Within 45 days of electing coverage

If you have questions about COBRA requirements, your company’s health plan administrator is a good place to start. The Department of Labor also makes available comprehensive employer compliance information. In addition to COBRA, many states have insurance continuation laws that provide additional rights or benefits to terminated employees, or that apply to companies too small to be covered under federal law.

### ***What types of optional post-termination compensation and benefits might I consider offering?***

◆ **Severance Pay.** Severance pay is an amount of compensation, in addition to money owed for time worked, that is paid to the terminated employee. Severance serves both as a gesture of goodwill and to help to tide workers over until they obtain new employment. An employer generally has no legal obligation to pay severance, and the amount you pay will usually be totally within the discretion of the organization. Some companies have structured severance policies that clearly spell out the conditions under which discharged employees are entitled to severance and the amounts they will get. Most businesses prefer to handle severance on a case-by-case basis

without locking themselves into a formula that they might not always want to apply.

◆ *Outplacement.* Several types of outplacement arrangements are available to help the fired worker accept the loss of a job, acquire job search skills, and move on to new employment. These services can range from half-day workshops on resume preparation and interview techniques, to expensive senior executive programs providing private offices and administrative support. Providing outplacement not only eases an employer's guilt over a discharge, but can also demonstrate to employees that the company cares. Good outplacement counseling can help to diffuse employee anger and redirect energies toward planning for the future. The quality and cost of outplacement services varies widely. Before retaining the services of an outplacement professional, ask for details on the program and check references.

You cannot force anyone to participate in an outplacement program. Often, workers will say that they don't need any outplacement assistance, requesting instead that you pay them directly the money you otherwise would have spent on the program as part of their severance package. It is best not to agree to this request, because direct payment will not serve the purpose of diffusing anger or focusing attention on new employment. Explain gently but firmly that the outplacement is being offered not as compensation, but as a benefit to encourage success in the job search process.

◆ *Other Compensation and Benefits.* You can create other features of a severance package tailored to a specific situation. You may offer an executive with a company car the opportunity to continue using the vehicle for a designated period of time until she purchases a new one. Or you might forgive an employee loan or allow a manager to keep his laptop computer or other equipment. If you can accommodate a person within reason, you can go far toward easing a difficult situation.

***Am I free to pick and choose what optional benefits I will offer individual terminated employees?***

Yes, as a general rule, you are—provided that you do not create a situation where employees can claim that they are entitled to certain separation benefits that would normally be considered optional. If your handbook has a written severance policy that states, for example, that employees will be paid severance of two weeks for every year worked, you will be obligated to abide by the policy for all terminated employees. Similarly, if you have a signed employment contract with a stated severance provision, you are bound to the terms of the agreement. Even if you have no employment

contracts or written severance policies or procedures, you may be obligated to provide certain severance benefits and payments if the company has a history of providing severance to employees who were discharged under similar circumstances.

When you are deciding what optional severance benefits to offer in a given situation, be fair and rational in your determinations, and do not discriminate among certain classes of employees. For example, a practice of offering larger severance payments to men than to women will likely get you into trouble.

### ***Are all terminated workers entitled to unemployment insurance?***

No, they are not. Although the decision whether to award unemployment insurance to a given employee is up to the state and not the company, most states do not allow employees fired for serious cause or misconduct to collect benefits. The conduct that would disqualify a person from receiving unemployment benefits generally needs to be intentional and seriously injurious to the employer, its employees, or its customers. Sexual harassment, on-the-job drug usage, and theft are, as a rule, offenses serious enough to prevent a worker from collecting unemployment. Merely having a difficult personality, being a sloppy worker, or not being skilled enough to perform a job are not sufficient justification to deny someone unemployment benefits.

Even an employee who quits voluntarily may be entitled to unemployment benefits if he had good cause for resigning. “Good cause” means that the worker would have suffered some compelling harm or injury if he continued on the job. Quitting a job because of serious company safety violations or because the organization asked the employee to do something illegal are examples of good cause. Workers who quit in lieu of being fired usually will not be denied unemployment compensation.

### ***Should I contest a terminated employee’s application for unemployment insurance?***

If the employee was not terminated for misconduct sufficient to justify the withholding of unemployment benefits, you should not contest the claim. You have no grounds to do so, and your baseless opposition to the claim will reflect poorly on you. Even if you terminated the employee for serious misconduct and you have grounds to contest the claim, you may want to think twice before doing so. Although each unemployment claim you pay may have an impact on your company’s insurance rates, it costs money and manager time to oppose a claim, and you will be sure to engender the



animosity of the terminated worker. Sometimes, this animosity is great enough to lead the worker to file a wrongful termination lawsuit when he had not previously planned to do so. Before you decide to oppose any claim, do a careful analysis of your reasoning, the risks involved, and your anticipated benefits.

If you decide to contest a claim, you have the burden of proving that the employee is not entitled to unemployment benefits. The state unemployment office will request certain information in writing, and it is important that you adhere to any deadlines established by the agency. You may be asked to appear at an administrative hearing to discuss the case.

***What is a “waiver” or “release,” and should I get discharged employees to sign one?***

A waiver or release is a legal document in which the employee agrees not to sue the company over matters taking place during the course of employment. While you need not obtain a release from every terminated worker, it is helpful to request one in situations where you believe the employee is likely to file a wrongful discharge claim. A valid release in an individual's employment file can save you many headaches down the road.

For a release to be valid, it must conform to specific criteria. As the document has significant legal ramifications, ask an attorney to prepare it. In general, all waivers must meet three criteria. They must:

1. *Provide additional benefit to employee.* The employee signing the waiver must receive in exchange a benefit to which she would not ordinarily be entitled. This could be additional severance, outplacement, or other optional payments or benefits. It is not sufficient to offer benefits detailed in the company's standard severance policy, nor can you withhold vacation pay, 401(k) plan funds, or any other items already due to the employee.
2. *Be voluntary on the part of the employee.* You cannot threaten, force, or coerce an individual to sign a release of claims. Give the employee a reasonable amount of time to review (or have an attorney review) and sign the release document. Do not make the waiver language unduly complicated or you risk employees arguing later that the release was not voluntary because they did not understand it.
3. *Afford legally required protection to older workers.* The Older Workers Benefit Protection Act (OWBPA) places certain additional requirements on employers when they obtain releases from workers age 40 or older. Under this law, the release document provided to the employee must contain language that specifically:

- ◆ Gives the employee up to twenty-one days to review and consider the document
- ◆ Advises the employee to consult with an attorney regarding the document
- ◆ Allows the employee to revoke the release within seven days after signing

In situations involving workers covered by the OWBPA, it is appropriate to withhold the payment of additional benefits until the revocation period has expired. However, do not hold up benefits or payments that are required to be paid beforehand.

## OTHER POST-TERMINATION MATTERS

### ***What do I tell remaining employees about a coworker's termination?***

After terminating a worker, it is good practice to call together the employees in the affected employee's workgroup or department and make a simple announcement, such as, "As of this afternoon, John is no longer employed by the company. His duties will be split between Mary and Jim until we find a replacement." To avoid liability for defamation, avoid going into details about the reasons for termination or any of the circumstances surrounding the discharge.

Sometimes employees will seem especially upset or distracted after a coworker is fired. Understand that they are probably wondering whether they will be the next to go. You can help the situation by taking care to acknowledge good performance, especially in the wake of the termination. Let employees know that their work is valued.

### ***Are there steps I should take to protect company confidential information when an employee leaves?***

If your employees signed a confidentiality agreement at the commencement of their employment, you will want to remind them upon termination that their obligation not to disclose or improperly use trade secrets or other proprietary company information extends beyond the term of employment. In addition to the other termination paperwork provided to workers, you should also include, and ask employees to sign, a document that states that they understand their obligations under the confidentiality agreement, and that they agree not to violate the contract. If the employee

refuses to sign this document, send a letter explaining that the individual is bound to maintain confidentiality and that the company will prosecute violations.

***Is it appropriate to provide references for terminated employees?***

This decision is entirely up to you. Often, a discharged employee will request that the employer provide references to potential new employers. Deciding whether to give a reference is confusing to many organizations, mostly because of the fear of defamation lawsuits. As a result, many organizations adopt policies that confine reference information to the position held and dates of employment—so-called neutral or “name, rank, and serial number” references.

It’s true that when you give a negative reference, you run the risk of exposure to defamation, invasion of privacy, or discrimination lawsuits by former employees. However, there are often good reasons to provide more comprehensive references. If an employee is discharged for reasons other than poor performance or unacceptable conduct—such as lack of work or the company’s need for a different skill set—failure to pass along positive information may unfairly penalize good workers. In addition, just as your company wants to learn as much as possible about a prospective worker before extending an offer, other employers want to gain knowledge as well.

Lately, courts are recognizing that employers have a legitimate need to exchange performance-related information, and they are increasingly protecting companies that opt to provide more detailed employment references, as long as employers provide information that is *job-related*, *based on reasonable evidence*, and *without malice*. If you do decide to give more detailed references, follow these guidelines:

- ◆ *Obtain a release form.* Provide a reference release form for employees to sign upon leaving the organization, releasing you from any liability for responding truthfully to any questions asked during the course of giving references. Tell departing employees that without a signed release, the organization will provide “neutral” references only.
- ◆ *Establish a point of contact.* Assign a point of contact within the organization responsible for handling all reference inquiries. Instruct employees not to provide any information, but to direct all reference calls or letters to this individual. Make sure the individual designated as the point of contact is properly trained as to the organization’s reference policy, as well as the do’s and don’ts of providing reference information.

- ◆ *Provide only accurate and verifiable information.* An employee cannot win a defamation suit unless the reference provides intentionally false information. Provide only honest opinions, and express opinions as opinions rather than statements of fact. Do not respond with malice. Limit the information given to the employee's job-related performance. Do not divulge gossip or information that might invade the former employee's privacy, such as information about an individual's medical condition, political beliefs, or religious practices. Do not provide unsolicited information; address only the specific questions asked.
- ◆ *Give references to proper parties only.* Verify the identity of the person requesting the reference. Make sure that the person is an appropriate individual to be receiving the information and that the former employee knows that her references are being checked. If in doubt about the identity of the person requesting the reference, ask for the request in writing. Do not give out any information to parties that do not have a legitimate "need to know" (i.e., an employee or agent of a prospective employer, a job placement firm, etc.).

***Do I have any obligation to pass on negative information in a reference?***

In general, you are not required to do so. If you fire a worker for poor performance or unacceptable conduct, the employee will probably not request that you provide references or sign a reference release, and you are well within your rights to give a simple neutral reference. However, if the reasons for termination involved fraud, theft, violence, or some other form of illegal or egregious behavior, you could be held liable for failure to disclose this information to a future employer when called for a reference—even if your company policy does not allow detailed references. In these situations, consult with an attorney before providing an employment reference.

***Can I now expect terminations to go more smoothly in the future?***

Terminations are not pleasant, but they are a necessary part of operating a successful organization. As long as you remember that they are business, not personal decisions, and if you follow consistent guidelines, then the termination process will be less painful for everyone involved.

# Resource Guide

**T**his resource guide is designed to point you in the right direction to obtain additional information on topics introduced in this book. We have organized the guide in the same order as the chapters, identifying sites and organizations for specific topics, as well as including a list of general HR resources that we like.

## CHAPTER 1: EMPLOYEE SELECTION

### Costs of Staffing

Staffing.org is a Web-based nonprofit that assists companies in determining the costs and effectiveness of staffing. It also makes available a free toolkit for developing metrics for costs of the employment function.

### Free Government Resources

- ◆ Department of Labor has an online guide to finding your local One-Stop employment centers; it is available at:  
[www.servicelocator.org](http://www.servicelocator.org)
- ◆ Social Security Administration has answers to questions about finding and hiring employees with disabilities at:  
[www.ssa.gov/work](http://www.ssa.gov/work)
- ◆ Welfare to Work Partnership ([www.welfaretowork.org](http://www.welfaretowork.org)) offers help in hiring and retaining employees from welfare-to-work programs.

### Interview Questions

- ◆ EEOC guidelines on appropriate interview questions that comply with the American with Disabilities Act are available at:  
[www.eeoc.gov/-ada/adahandbook.html#dodonts](http://www.eeoc.gov/-ada/adahandbook.html#dodonts)

- ◆ The HR Guide ([www.hr-guide.com](http://www.hr-guide.com)) has links to over 2,000 interview questions that can be viewed, for free, by category. While the quality of these questions is mixed, they give the interviewer some good ideas. Many of the questions can be used as the basis for behaviorally based interviews.

### **Lists of Colleges and Graduate Schools**

*Barron's Compact Guide to Colleges, 2003 Edition.* New York: Barron's Educational Series, 2002.

Fiske, Edward B. and Robert Logue. *The Fiske Guide to Colleges 2004.* Naperville, IL: Sourcebook Trade, 2003.

*Peterson's Four Year Colleges 2004.* Princeton, NJ: Peterson's Guides, 2003.

*Peterson's Graduate Schools in the U.S. 2004.* Princeton, NJ: Peterson's Guides, 2003.

### **Preemployment Testing**

Association of Test Publishers  
1201 Pennsylvania Ave., Suite 300  
Washington, D.C. 20004  
Phone: 866-240-7909  
Web site: [www.testpublishers.org](http://www.testpublishers.org)

Buros Institute of Mental Measurements  
University of Nebraska-Lincoln  
21 Teachers College Hall  
Lincoln, NE 68588-0348  
Phone: 402-472-6203  
Web site: [www.unl.edu/buros/](http://www.unl.edu/buros/)

Society for Industrial and Organizational Psychology  
520 Ordway Ave.  
P.O. Box 87  
Bowling Green, OH 43402-0087  
Phone: 419-353-0032  
Web site: [www.siop.org](http://www.siop.org)

Select Web sites with further information on preemployment testing:

- ◆ Department of Health and Human Services guidelines for a creating a drug-free workplace: [www.samhsa.gov](http://www.samhsa.gov)

- ◆ EEOC guidelines for the use of tests and selection procedures: [www.dol.gov](http://www.dol.gov).
- ◆ Fair Credit Reporting Act information: [www.ftc.gov/os/statutes/fcrajump.htm](http://www.ftc.gov/os/statutes/fcrajump.htm)
- ◆ The Personality Project: [www.personality-project.org](http://www.personality-project.org)

## Relocation

Montermoving.com is a portal for a wide range of relocation resources and information, including links to vendor sites, advice and articles, and free tools and information on countries and cities.

## Web Recruiting Resources

*AIRS Personal Trainer*. This free Web-based newsletter is available by registering at [www.airsdirectory.com/news/newsletters/](http://www.airsdirectory.com/news/newsletters/).

Crispin, Gerry and Mark Mehler. *CareerXRoads 2003 Edition*. Kendall Park, NJ: MMC Group, 2003. (For online orders, see [www.careerxroads.com](http://www.careerxroads.com).)

Flip Dog ([www.flipdog.com](http://www.flipdog.com)) is a combination job posting site and portal for information about recruiting; it publishes an online newsletter on recruitment topics.

*News for Recruiters*. This easy-to-read, free online newsletter is available at [www.newsforrecruiters.com](http://www.newsforrecruiters.com).

Nicheboards.com is a good portal to find sites for specific job functions or industries.

*Weddle's Directory of Employment-Related Internet Sites for Recruiters and Job Seekers*. Stamford, CT: Weddle's, 2002.

## CHAPTER 2: HR POLICIES

Employment Policy Foundation

1015 Fifteenth St., NW

Suite 1200

Washington, D.C. 20005

Phone: 202-789-8685

Web site: [www.epf.org](http://www.epf.org)

Information about changing employment policy trends.

Employment Policies Institute

1775 Pennsylvania Ave, N.W., Suite 1200

Washington, D.C. 20006-4605

Phone: 202-463-7650

Web site: [www.epionline.org](http://www.epionline.org)

Up-to-date news on employment policy issues.

### **Employee Handbooks**

The HR Guide ([www.hr-guide.com](http://www.hr-guide.com)) lets you browse a selection of online handbooks, so you can get an idea of what other companies put in their employee handbooks.

## **CHAPTER 3: PERFORMANCE MANAGEMENT**

International Society for Performance Improvement (ISPI)

1400 Spring Street, Suite 260

Silver Spring, MD 20910

Phone: 301-587-8570

Web site: [www.ispi.org](http://www.ispi.org)

Association dedicated to increasing performance in the workplace.

## **CHAPTER 4: TRAINING AND DEVELOPMENT**

American Management Association

1601 Broadway

New York, NY 10019

Phone: 212-586-8100

Web site: [www.amanet.org](http://www.amanet.org)

Nationally recognized not-for-profit provider of management training.

American Society for Training and Development (ASTD)

1640 King St.

P.O. Box 1443

Alexandria, VA 22313-2043

Phone: 703-683-8100

Web site: [www.astd.org](http://www.astd.org)

Premier U.S. organization for training, with local chapters nationwide.

Center for Creative Leadership

One Leadership Place

P.O. Box 23600

Greensboro, NC 27438-6300

Phone: 336-545-2810

Web site: [www.ccl.org](http://www.ccl.org)

Cornell ILR Management Programs

Cornell University, School of Industrial Labor Relations

16 East 34th St.



New York, NY 10016–4325  
Phone: 212–340–2802  
Web site: [www.ilr.cornell.edu](http://www.ilr.cornell.edu)

### Select Web Sites to Help Identify Trainers and Training Materials

- ◆ HR Software: [www.hr-software.net](http://www.hr-software.net)
- ◆ HR Guide: [www.hr-guide.com](http://www.hr-guide.com)
- ◆ *Training* magazine: [www.trainingmag.com](http://www.trainingmag.com)
- ◆ The Training Registry: [www.trainingregistry.com](http://www.trainingregistry.com)

## CHAPTER 5: EMPLOYEE RELATIONS AND RETENTION

### Communications

The Online Women's Business Center ([www.onlinewbc.gov](http://www.onlinewbc.gov)) of the U.S. Small Business Association presents a variety of helpful tips for better manager communication, work-life balance, and other important management effectiveness and retention issues.

### Employee Recognition

National Association for Employee Recognition  
1801 North Mill St., Suite R  
Naperville, IL 60563  
Phone: 630–369–7783  
Web site: [www.recognition.org](http://www.recognition.org)  
A members organization devoted to reward and recognition.

### Work-Life Balance

International Telework Association and Council (ITAC)  
401 Edgewater Place, Suite 600  
Wakefield, MA 01880  
Phone: 781–876–8815  
Web site: [www.workingfromanywhere.org](http://www.workingfromanywhere.org)  
Information on telecommuting arrangements, as well as links to federal, state, and local programs.

Select Web sites with further information:

- ◆ AT&T telework webguide ([www.att.com/telework](http://www.att.com/telework)) has an extensive section of information on telework and telecommuting.

- ◆ Work and Family Connection ([www.workfamily.com](http://www.workfamily.com)) provides a myriad of free information and services related to programs promoting work-life balance.

## CHAPTER 6: COMPENSATION

- ◆ Bureau of Labor Statistics ([www.bls.gov](http://www.bls.gov)) is the source for federally compiled wage information for comparison and cost of living.
- ◆ Employment Standards Division of the U.S. Department of Labor is an extensive information source about federal and state minimum wages and exempt-nonexempt status. Required posters and forms are available online at [www.dol.gov/esa](http://www.dol.gov/esa). Or call 1-866-4-USA-DOL with questions.
- ◆ Online resources for wage and salary comparisons—[www.salary.com](http://www.salary.com) and [www.wageweb.com](http://www.wageweb.com)—provide basic free information and additional information for purchase.

### World at Work

14040 N. Northsight Blvd.

Scottsdale, AZ 85260

Phone: 877-951-9191

Web site: [www.worldatwork.org](http://www.worldatwork.org)

Professional association for compensation, benefits, and total rewards.

### Compensation Consultants

Major compensation consultants with Web sites containing free information and summaries of studies and papers:

- ◆ Hay Group: [www.haygroup.com](http://www.haygroup.com)
- ◆ Hewitt Associates: [www.hewitt.com](http://www.hewitt.com)
- ◆ Mercer Human Resource Consulting: [www.mercerhr.com](http://www.mercerhr.com)
- ◆ Watson Wyatt Worldwide: [www.watsonwyatt.com](http://www.watsonwyatt.com)

## CHAPTER 7: BENEFITS

### Employee Benefit Research Institute (EBRI)

2121 K St., NW, Suite 600

Washington, D.C. 20037-1896

Phone: 202-659-0670

Web site: [www.ebri.org](http://www.ebri.org)

Nonprofit committed to effective and responsible employee benefit plans.

The ESOP Association

1726 M St., NW, Suite 501

Washington, D.C. 20036

Phone: 202-293-2971

Web site: [www.the-esop-empowner.org](http://www.the-esop-empowner.org)

Information about employee stock option plans (ESPOs).

International Foundation of Employee Benefit Plans (IFEBP)

18700 West Bluemound Rd.

P.O. Box 69

Brookfield, WI 53008-0069

Phone: 262-786-6700

Web site: [www.ifebp.org](http://www.ifebp.org)

Offers Employee Benefits Infosource, a comprehensive online database of benefits information.

National Committee for Quality Assurance (NCQA)

2000 L St., NW, Suite 500

Washington, D.C. 20036

Phone: 202-955-3500

Web site: [www.ncqa.org](http://www.ncqa.org)

An independent nonprofit dedicated to evaluating the quality of managed care plans.

National Safety Council

1121 Spring Lake Dr.

Itasca, IL 60143

Phone: 630-285-1121

Web site: [www.nsc.org](http://www.nsc.org)

Authoritative nonprofit devoted to employer information and training to prevent workplace injuries and illnesses.

Nation's Network of Child Care Resource and Referral Agencies  
(NACCRRA)

1319 F. St., NW, Suite 810

Washington, D.C. 20004-1106

Phone: 202-393-5501

Web site: [www.naccrra.net](http://www.naccrra.net)

Information and referral sources about community child care.

## CHAPTER 8: REGULATORY ISSUES

### Americans with Disabilities Act

The Job Accommodation Network (<http://janweb.icdi.wvu.edu>) provides a free service to help employers identify specific accommodations for workers with disabilities, with a searchable online tool to match disabilities with accommodations.

### Equal Employment Opportunity Laws

The U.S. Equal Employment Opportunity Commission ([www.eeoc.gov](http://www.eeoc.gov)) maintains a comprehensive Web site with the text and explanations of the EEO laws, compliance tips, and other useful information.

### Family and Medical Leave Act

The U.S. Department of Labor provides very good information on FMLA and other types of leave at:

[www.dol.gov/dol/topic/benefits-leave/fmla.htm](http://www.dol.gov/dol/topic/benefits-leave/fmla.htm)

### General Legal and Regulatory Information

- ◆ BusinessLaw.gov is a Web site providing information about the variety of laws that affect smaller businesses.
- ◆ The Department of Labor's Web site has a specific section to help employers understand employment laws at [www.dol.gov/elaws](http://www.dol.gov/elaws).
- ◆ FindLaw.com offers information about a variety of federal, state, and local laws.

### Immigration

Bureau of Citizenship and Immigration Services maintains Web sites at [www.immigration.gov](http://www.immigration.gov) or [www.bcis.gov](http://www.bcis.gov) where you can download and print copies of the Form I-9 and obtain other information on authorization to work in the United States.

### Occupational Safety and Health Administration Act

- ◆ The National Institute for Occupational Safety and Health ([www.cdc.gov/niosh/homepage.html](http://www.cdc.gov/niosh/homepage.html)) has a wealth of information about identifying and managing specific workplace hazards.
- ◆ The Occupational Safety and Health Administration's Web site ([www.osha.gov](http://www.osha.gov)) provides information about the OSH as well as individual state health and safety laws.

## CHAPTER 9: VOLATILE WORKPLACE ISSUES

### Employee Investigations

Investigations conducted by attorneys or others outside of the company may be subject to the Fair Credit Reporting Act (FCRA). You can find out more about how the FCRA may affect you at the Federal Trade Commission ([www.ftc.gov](http://www.ftc.gov)).

### Employee Monitoring

- ◆ The American Management Association ([www.amanet.org](http://www.amanet.org)) conducts an annual survey of the monitoring practices of major companies and makes summaries of its findings available.
- ◆ The Employee Polygraph Protection Act of 1988 sets out guidelines for polygraph testing for private employers. The full text of this law can be found at:  
[www4.law.cornell.edu/uscode/29/ch22.html](http://www4.law.cornell.edu/uscode/29/ch22.html)  
A copy of the notice to employees required under the Act can be found at:  
[www.dol.gov/esa/regs/compliance/posters/eppa.htm](http://www.dol.gov/esa/regs/compliance/posters/eppa.htm)

### Substance Abuse in the Workplace

- ◆ Department of Labor guidelines for a drug-free workplace, as well as a variety of valuable information on controlling substance abuse at work, can be found at:  
[www.dol.gov/dol/workingpartners.htm](http://www.dol.gov/dol/workingpartners.htm)
- ◆ The Drug-Free Workplace Act of 1988 affects federal contractors and federal grantees. The full text can be found at:  
[www4.law.cornell.edu/uscode/41/ch10.html](http://www4.law.cornell.edu/uscode/41/ch10.html)
- ◆ The Substance Abuse and Mental Health Services Administration ([www.samhsa.gov](http://www.samhsa.gov)), an agency of the U.S. Department of Health and Human Services, offers information on starting a drug-free workplace program and other centralized workplace resources.

### Workplace Violence

The Occupational Safety and Health Administration (OSHA) conducts studies on workforce violence and provides guidelines and training materials for preventing workplace violence in general, as well as in several specific professions. Its Web page is:

[www.osha.gov/SLTC/workplaceviolence/index.html](http://www.osha.gov/SLTC/workplaceviolence/index.html)

## **CHAPTER 10: TERMINATION AND DISCHARGE**

### **COBRA**

You can get more information about COBRA requirements from the U.S. Department of Labor online at:  
[www.dol.gov/dol/topic/health-plans/cobra.htm](http://www.dol.gov/dol/topic/health-plans/cobra.htm)

### **Older Workers Benefit Protection Act (OWBPA)**

The U.S. Equal Employment Opportunity Commission ([www.eeoc.gov](http://www.eeoc.gov)) provides information about this and other age discrimination laws.

# Tools and Templates

Throughout this book, we suggest that in creating human resources documents, you refrain from merely copying materials gathered from other companies and instead take the time to develop forms and materials that reflect the unique culture, goals, and values of your organization. The tools and templates presented in this section are not intended to be the last word on the subject, but they are designed to help you put some of your thoughts in focus. You can revise each of these forms as you see fit.

1. Ten Questions to Ask by Phone Before Scheduling a Candidate for an Interview
2. Applicant Flow Log
3. Preemployment Telephone Reference Check
4. Sample Health Plan Comparison
5. Sample Acknowledgment of Receipt of Employee Handbook
6. Sample Goals Form for Performance Management
7. Management Focus Group Preparation for Updating a Performance Management System
8. Self-Evaluation
9. Trainer's Checklist
10. Training Program Evaluation Form
11. Telecommuting Checklist
12. Termination Checklist
13. Exit Interview Questionnaire
14. Employment Reference Request

## TEN QUESTIONS TO ASK BY PHONE BEFORE SCHEDULING A CANDIDATE FOR AN INTERVIEW

**1. What is the correct spelling and pronunciation of your name?**

*Constant misspelling and mispronunciation make people feel unwelcome.*

**2. What position(s) are you applying for?**

*You may give a very brief description of the job. Job titles can be misinterpreted.*

**3. Where are you currently employed?**

*The resume you have may indicate that someone is employed, but the individual's status may have changed to unemployed or another position.*

**4. Why did you leave your last job?**

**5. When are you available to start a new position?**

**6. What hours/shifts/days can you work?**

**7. What are your salary requirements for a new position?**

*Candidates may not want to be specific, so ask for a salary range or tell them a range for the job. You do not want to take the time to bring in a candidate seeking a \$100,000-a-year position to interview for a job paying \$60,000.*

**8. Do you possess the following skills, knowledge, licensing, or certification?** \_\_\_\_\_

*Identify any special skill, knowledge, or licensing/certification needed for the position, such as software knowledge or a driver's license. You should know if candidates possess these basic requirements before you bring them in.*

**9. Why are you interested in this position?**

**10. When are you available to come in for an interview?**

*If you have interview availability and you want to bring the person in, you should say, "Can you come in on Wednesday at 10:00 A.M.?"*

**Name of Telephone Screener:** \_\_\_\_\_ **Date:** \_\_\_\_\_

*If the answer to any question indicates that a candidate should not be invited in for the interview, or needs further discussion first, thank the candidate for his or her time and say you will review the matter and call if an interview is appropriate. If you are not interested, send the candidate a brief letter, as you would any candidate you interview in-person and do not pursue. If it is clear to both the interviewer and the candidate that this is not an appropriate position, acknowledge this fact during the telephone conversation, say thank you, and conclude the conversation. If it is possible that the individual would be considered for another position at another time, mention this possibility.*





## PREEMPLOYMENT TELEPHONE REFERENCE CHECK

Name of Candidate \_\_\_\_\_

Position \_\_\_\_\_

Name of Person Contacted \_\_\_\_\_ Telephone # \_\_\_\_\_

Title/Company \_\_\_\_\_

1. Please verify dates of employment: \_\_\_\_\_

2. Please verify position(s) held: \_\_\_\_\_

3. How would you describe this candidate's quality of work? \_\_\_\_\_

4. Please give me a specific example. \_\_\_\_\_

5. Please describe this candidate's relationships with other employees. \_\_\_\_\_

6. How did the candidate interact with their immediate supervisor? \_\_\_\_\_

7. What was this candidate's greatest accomplishment while working for you (your company)? \_\_\_\_\_

8. If you would work with this employee again, what would you like to see them change or improve? \_\_\_\_\_

9. Is there anything else you would like to add that would help us to make our decision? \_\_\_\_\_

Name of Person Obtaining Reference \_\_\_\_\_

Signature \_\_\_\_\_ Date of Reference \_\_\_\_\_

## SAMPLE HEALTH PLAN COMPARISON

	This Year		Next Year	
<b>HMO</b>	<b>2004</b>		<b>2005</b>	
Office Visit Copay	\$15		\$20	
Routine Preventive Care	100% after \$15 Copay		100% after \$20 Copay	
Annual Deductible	None		None	
Annual Out-of-Pocket Maximum	None		None	
Preexisting Condition Limitation	None		None	
Lifetime Maximum	\$1,000,000		\$1,000,000	
Prescription Drugs	Participating Pharmacy		Participating Pharmacy	
Retail Generic (30-day supply)	\$7		\$10	
Retail Brand Name (30-day supply)	\$15		\$25	
Nonpreferred Brand Name	\$35		Not Covered	
Generic Mail Order (90-day supply)	\$10		\$20	
Brand Name Mail Order (90 days)	\$20		\$50	
Nonpreferred Brand Mail Order	\$40		Not Covered	
<b>PPO</b>	<b>2004</b>		<b>2005</b>	
	<b>In Network</b>	<b>Out of Network</b>	<b>In Network</b>	<b>Out of Network</b>
Individual Annual Deductible	\$250	\$500	\$250	\$1,000
Family Annual Deductible	\$500	\$1,000	\$500	\$2,000
Annual Out-of-Pocket Maximum				
Individual	\$1,500	\$3,000	\$1,500	\$3,500
Family	\$3,000	\$6,000	\$3,000	\$7,000
Office Visit Copay	\$15	N/A	\$25	N/A
Coinsurance (plan pays)	89%	60%	80%	60%
Routine Preventive Care (children to age 13)	100% after \$15 Copay	60%	100% after \$20 Copay	60%
Routine Preventive Care (adults age 14 and up)	100% after \$15 Copay	None	100% after \$20 Copay	None
Preexisting Condition Limitation	Yes	Yes	Yes	Yes
Lifetime Maximum	Combined in and out of network: \$1,000,000			
Prescription Drugs				
Retail Generic (30-day supply)	\$10	Not Covered	\$10	Not Covered
Retail Brand (30-day Supply)	\$20	Not Covered	\$25	Not Covered
Retail Nonpreferred	N/A	N/A	\$50	Not Covered
Generic Mail (90-day supply)	\$15	Not Covered	\$20	Not Covered
Preferred Brand Mail (90 days)	\$25	Not Covered	\$50	Not Covered
Nonpreferred Brand Mail	N/A	N/A	\$100	Not Covered

A comparison chart in this format is useful for open enrollment to show changes in the plan and to help participants to choose between plans. After open enrollment, the column showing the previous year can be taken out.

## **SAMPLE ACKNOWLEDGMENT OF RECEIPT OF EMPLOYEE HANDBOOK**

I, \_\_\_\_\_, acknowledge that I have received a copy of the XYZ Company (the “Company”) Employee Handbook (the “Handbook”) and that I have read the policies and procedures contained in the Handbook, understand them, and agree to abide by them. I understand that during the course of my employment with the Company, questions may arise that are not explicitly addressed in the Handbook, and I agree to consult with my supervisor or other member of the Company management regarding these matters.

I understand that the Handbook is intended to serve as general information about policies and procedures of the Company, but in no way constitutes, creates, or forms a part of an express or implied employment contract with the Company, nor does it guarantee employment for any definite or indefinite period of time. I recognize that my employment is employment “at will,” and that either the Company or I can terminate my employment at any time, with or without cause or notice.

The Handbook supersedes any and all prior written or unwritten policies, procedures, or practices of the Company pertaining to or inconsistent with the subjects detailed herein. The Company reserves the right to clarify, change, or supplement any information contained in the Handbook, and the Company will notify me if and when such changes occur. No changes to this Handbook may be made without the approval of the President of the Company, and any such changes will not be deemed to affect my “at will” employment status.

Signature of Employee: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

SAMPLE GOALS FORM FOR PERFORMANCE MANAGEMENT

Priority	Goal	Steps Required to Achieve Goal	Expected Completion Date
The priority can be taken from the overall action that needs to be taken, or from the mission or vision of the organization.	The goal is the specific measurable target.	List the steps that need to be taken to achieve the goal.	This can be a specific date, the end of a time period such as a calendar quarter, or ongoing.

## MANAGEMENT FOCUS GROUP PREPARATION FOR UPDATING A PERFORMANCE MANAGEMENT SYSTEM

We are looking forward to a successful employee focus group session to gather information for updating the Performance Management System. Your involvement in this process will ensure that the final product will meet your needs as a manager, the needs of your employees, and company goals.

Our session will last no more than two hours. To make the most out of this time and to enable us to gather the best information, please complete the following questions that we will discuss during the focus group.

1. Why is performance measurement important?
2. What happens when a company does a good job of measuring performance?
3. What happens when a company does a poor job of measuring performance?
4. Think about any best practices in the area of performance management that you have seen at other companies.
5. Identify the best practices in performance management at our company.
6. Describe the mission/goals of our company.
7. What are some organizational obstacles you face in setting and achieving goals and expectations at this company?
8. What are some personal obstacles you face in setting and achieving goals and expectations at this company?
9. List five results expected at our company for a successful employee.
10. List and describe five words or phrases frequently used here to describe or measure performance or results.
11. In your opinion, when is the best time to review performance?
12. What training do you need to measure performance effectively?

## SELF-EVALUATION

NAME: \_\_\_\_\_ POSITION: \_\_\_\_\_

REVIEWING MANAGER: \_\_\_\_\_

DATE IN POSITION: \_\_\_\_\_ ORIGINAL HIRE DATE: \_\_\_\_\_

EVALUATION PERIOD: FROM \_\_\_\_\_ TO \_\_\_\_\_

- A. Describe your major accomplishments that have been achieved during the period covered by this review.

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- B. Would you prefer to remain in your present position, or if you were to be considered for a new position in the near future (6–12 months) what position(s) do you feel you would be most qualified to assume?

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- C. In what areas do you see the greatest need for development, and what training or experiences would meet these development needs?

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- D. What are your long-range career goals, and how does your employment at this company help you to reach these goals?

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## TRAINER'S CHECKLIST

### Four to six weeks before the program

- \_\_\_ 1. Set a date for the program.
- \_\_\_ 2. Reserve meeting room and necessary equipment and food and beverage.
- \_\_\_ 3. Notify participants of date, time, and location of program.
- \_\_\_ 4. Order materials, as needed, based on number of participants.
- \_\_\_ 5. Make certain your facilitator's notes are prepared.

### A few days before the program

- \_\_\_ 1. Review your facilitator's notes and make any necessary changes.
- \_\_\_ 2. Confirm attendees.
- \_\_\_ 3. Confirm space, including equipment requirements and food and beverage.
- \_\_\_ 4. Check materials, including handouts, preprinted booklets, and videos or any other multimedia.

### The day of the program

- \_\_\_ 1. Arrive in the room at least one hour before start time to check setup.
- \_\_\_ 2. Check *all* equipment (e.g., multimedia, flip charts, markers, etc.).
- \_\_\_ 3. Set up your equipment; place handouts, name cards; create flip charts (you may choose to complete these in advance); set up "head table."
- \_\_\_ 4. Conduct the program.
- \_\_\_ 5. Ask participants to complete evaluations.

### Within three days after the program

- \_\_\_ 1. Follow up with participants on any unanswered questions.
- \_\_\_ 2. Summarize results to participant's supervisors.
- \_\_\_ 3. Review and summarize evaluations.
- \_\_\_ 4. Complete a memo to keep on file summarizing positives and negatives of the training program, including suggestions for changes or improvements.



## TRAINING PROGRAM EVALUATION FORM

Name of Program: \_\_\_\_\_ Facilitator: \_\_\_\_\_ Date: \_\_\_\_\_

Please rate the following items by circling the appropriate number based on this rating scale: 1–Did not meet expectations; 2–Met expectations; 3–Exceeded expectations.

### The Content

- |                                 |   |   |   |
|---------------------------------|---|---|---|
| 1. Was clear and understandable | 1 | 2 | 3 |
| 2. Reflected stated objectives  | 1 | 2 | 3 |
| 3. Handouts were valuable       | 1 | 2 | 3 |

Comments: \_\_\_\_\_

### The Facilitator

- |  |   |   |   |
|--|---|---|---|
| 4. Was knowledgeable and well prepared | 1 | 2 | 3 |
| 5. Answered all questions              | 1 | 2 | 3 |
| 6. Maintained audience interest        | 1 | 2 | 3 |

Comments: \_\_\_\_\_

### The Presentation

- |   |   |   |   |
|---|---|---|---|
| 7. Lectures and presentation were clear and well organized        | 1 | 2 | 3 |
| 8. Visual aids were used effectively                              | 1 | 2 | 3 |
| 9. The meeting room and setup was comfortable and not distracting | 1 | 2 | 3 |

Comments: \_\_\_\_\_

Please answer the following questions as specifically as possible.

1. What aspects of the workshop did you find the most valuable or useful?
2. What did you like the least? Why?
3. What improvements would you make in this workshop?
4. Would you recommend this workshop to others? \_\_\_\_\_ Yes \_\_\_\_\_ No
5. What other topics would you like to see covered at similar programs?
6. Other comments?

Name (optional) \_\_\_\_\_

Thank you for taking the time to complete this evaluation.

## TELECOMMUTING CHECKLIST

Employee Name: \_\_\_\_\_

Department: \_\_\_\_\_

Primary Business Location: \_\_\_\_\_

Telecommuting Location: \_\_\_\_\_

Supervisor Name: \_\_\_\_\_

Number of days/week telecommuting requested: \_\_\_\_\_

### REQUIREMENTS OF JOB:

	YES	NO
Measurable and definable work outputs	_____	_____
Concentration required	_____	_____
Extensive coworker interaction	_____	_____
In-office reference material needed	_____	_____
Work is autonomous	_____	_____
Permits e-mail, fax, phone interaction	_____	_____

### PERSONAL CHARACTERISTICS:

Self-motivated	_____	_____
Able to work without supervision	_____	_____
Computer literate	_____	_____

### EQUIPMENT REQUIREMENTS: Check all items relevant and specify whether they will be provided by the Company (C) or the employee (E).

	C	E
Desktop or laptop computer	_____	_____
Printer	_____	_____
Software (specify) _____	_____	_____
Modem	_____	_____
Additional telephone line	_____	_____
Fax machine	_____	_____
High-speed Internet connection	_____	_____
Copy machine	_____	_____
Voice mail	_____	_____
Office furniture	_____	_____
Other (specify) _____	_____	_____

	YES	NO
Individual approved for telecommuting?	_____	_____

Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## TERMINATION CHECKLIST

Employee Name: \_\_\_\_\_ Date of Termination: \_\_\_\_\_

Termination is voluntary: \_\_\_\_\_ involuntary: \_\_\_\_\_

### Before employee's last day of employment

#### Human Resources

- \_\_\_\_ 1. Prepare COBRA letter or contact COBRA administrator.
- \_\_\_\_ 2. Schedule exit interview.
- \_\_\_\_ 3. Notify insurance carriers.
- \_\_\_\_ 4. Compile all benefits conversion information and forms.
- \_\_\_\_ 5. Request final paycheck.

#### Accounting/Finance

- \_\_\_\_ 1. Prepare final paycheck, including any benefit days due.
- \_\_\_\_ 2. Cancel any company credit cards.
- \_\_\_\_ 3. Ensure final expense reports are submitted or provide a timetable for submission.
- \_\_\_\_ 4. Pay outstanding expenses.

#### MIS/Telecommunications

- \_\_\_\_ 1. Cancel voice mail access on appropriate date.
- \_\_\_\_ 2. Cancel network access on appropriate date.

### Last day of employment

- |   |                      |
|---|----------------------|
| ____ 1. Nondisclosure affirmation   | Date received: _____ |
| ____ 2. Reference release   | Date received: _____ |
| ____ 3. Last paycheck   | Date received: _____ |
| ____ 4. Collect keys  |                      |
| ____ 5. Collect ID/access cards   |                      |
| ____ 6. Collect phone/pager   |                      |
| ____ 7. Verify address  |                      |
| ____ 8. Provide benefit conversion information (this can be done before last day) |                      |

### After the employee's last day

- \_\_\_\_ 1. Check if any additional amounts owed (e.g., commissions, expense reports).
- \_\_\_\_ 2. Mail final pay stub to former employee if necessary.
- \_\_\_\_ 3. Check to ensure that COBRA notification was sent.

Reason for leaving: \_\_\_\_\_

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Company Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## EXIT INTERVIEW QUESTIONNAIRE

We would appreciate your taking a few minutes to answer the following questions about your decision to terminate your employment with our organization. This information will assist us in analyzing our employee turnover and in making this organization a better place to work. Please answer these questions honestly. Your responses will be treated as confidential and will *not* be placed in your employment file.

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Department: \_\_\_\_\_

Supervisor: \_\_\_\_\_

Dates of Employment: \_\_\_\_\_

What factors contributed to your accepting a job with this organization? \_\_\_\_\_

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Did you understand the job expectations of the position when you were hired?

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Did you receive the support of the organization in meeting these expectations?

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Please rate the following on a scale of 1 to 5 (with 5 being the most positive):

Enjoyment of your work:	1	2	3	4	5
Fairness of workload:	1	2	3	4	5
Salary:	1	2	3	4	5
Opportunity for growth:	1	2	3	4	5
Organizational effectiveness:	1	2	3	4	5
Group insurance benefits:	1	2	3	4	5
Other benefits (vacation, paid holidays, etc.):	1	2	3	4	5
Treatment by management:	1	2	3	4	5
Work environment (stress, frustrations, etc.):	1	2	3	4	5

Physical working conditions:	1	2	3	4	5
Quality of supervision:	1	2	3	4	5
Quality of training:	1	2	3	4	5
Recognition of achievements:	1	2	3	4	5
Opportunity to express grievances:	1	2	3	4	5

What did you most enjoy about working for this organization? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What did you like least about working for this organization?  
\_\_\_\_\_  
\_\_\_\_\_

What is your reason for leaving the organization?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Could this organization have done something to prevent your leaving? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If asked, would you recommend employment at this organization to a prospective employee? \_\_\_\_\_  
\_\_\_\_\_

Please comment on any other areas that you believe would improve the workplace quality of this organization. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

## EMPLOYMENT REFERENCE REQUEST

I, \_\_\_\_\_ [print name], acknowledge that I have been informed by the XYZ Company (the “Company”) that it is the policy of the Company to disclose only limited information in response to the request of a prospective employer for reference information about a current or former employee, including dates of employment, title of job performed, and confirmation of salary.

By executing this document, I am requesting that the Company depart from its general reference policy and provide, to any and all prospectors that may contact the Company to request employment-related information about me, any information about my employment that the Company considers appropriate, including but not limited to opinions and assessments about my performance and conduct as an employee; job duties; evaluations; reasons for separation; and eligibility for rehire.

In exchange for the Company’s agreeing to my request to provide additional employment-related information to prospective employers, I hereby release and discharge the Company, and its employees, officers, directors, and successors and assigns, from all claims, liabilities, or actions arising in connection with this Employment Reference Request and any related exchange of records or other communication related to my employment with the Company.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness Signature

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