

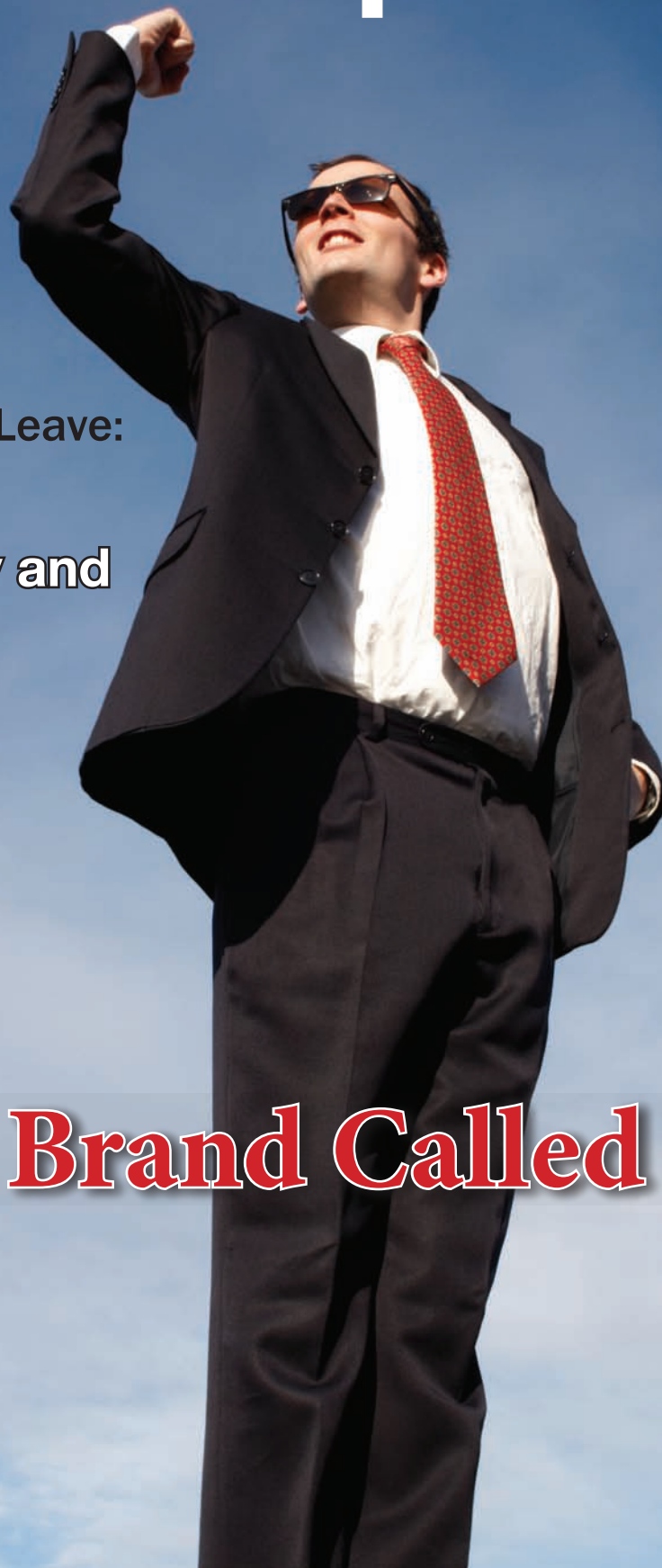
Performance Management: The Cure for the Common Workplace

Volume 1 Issue 6

ca

NOVEMBER 2009

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## Dental Facts

Employed adults lose more than 164 million hours of work each year due to oral health problems or dental visits.

32% of Americans cite bad breath as the least attractive trait of their co-workers.

44% of dental care expenditures are paid out-of-pocket.

As of 2006, only 57% of Americans have dental insurance

Hawaii & Massachusetts are the best states for dentists: In both, 76% of the population visited the dentist last year. The worst? In Mississippi, only 53% of the population went to the dentist.







The following articles were gleaned from Employers Group's *Weekly Workplace Employment Law Update* for the month of August, highlighting current judicial, legislative, and other employer-related news:

## Democrats Seek Passage of Health Bill in Senate by Year End as Time Line Slides

Senate Majority Whip Richard Durbin (D-Ill.) said Nov. 10 that the Democrats' goal is now for the Senate to pass its own version of a health care overhaul by the end of the year, rather than complete a final bill that can be sent to President Obama's desk by that time.

The Senate bill includes roughly \$357 billion in new taxes and fees—including a 40 percent excise tax on high-value health insurance plans—to help pay for the health care reforms.

The legislative time line has slid repeatedly after plans to have a bill sent to Obama "in the fall" evaporated amid intense debate within the Senate Finance Com-

mittee over how to find a bipartisan compromise.

As progress proved slower than expected by late summer, Democratic leaders turned their focus to having a final bill ready for Obama by year-end—a deadline Obama has frequently urged members of Congress to make.

But Senate Majority Leader Harry Reid (D-Nev.) is still trying to finalize a bill that would marry the two versions approved by the Finance (S. 1796) and Health, Education, Labor and Pensions (S. 1679) committees and is not focused on trying to get formal debate started on health care

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## California Labor Board Tosses Results of Decertification Election at Gallo Vineyards

SAN FRANCISCO—California's Agricultural Labor Relations Board Oct. 28 set aside results of a decertification vote at Gallo Vineyards Inc.'s Sonoma County, Calif., operations, holding that the winemaker gave the United Farm Workers union a flawed list of employees (Gallo Vineyards Inc., 35 Cal. A.L.R.B. No. 6, 10/28/09).

UFW spokeswoman Maria Machuca Nov. 5 said the ALRB decision means that UFW's collective bargaining agreement, which expires in March 2011, will continue.

The ALRB adopted the investigative hearing officer's

decision to set aside the decertification election, dismissed the decertification petition, and declined to order a rerun election. The decision was the second time since 2003 that the ALRB overturned a decertification vote at Gallo's operations citing employer misconduct.

UFW "relied on the deficient eligibility list, and the evidence of mitigation was unavailing. In particular, we note that on the two days just prior to the election only a handful of employees worked, vastly increasing the primacy of home visits. These factors, considered together, merit setting aside the election results," the ALRB said in its decision.

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## Congress Eager to Overturn High Court

Following successful enactment of the Lilly Ledbetter Fair Pay Act earlier this year, Congress again is working to overturn through legislation U.S. Supreme Court decisions that are perceived as unfriendly toward employees and plaintiffs, speakers told an American Bar Association conference Nov. 5.

Speaking at the ABA's Section of Labor and Employment Law's annual conference, management lawyer Michael Rosen said bills have been introduced that would overturn controversial rulings regarding the burden of proof in age discrimination cases, manda-

tory arbitration of statutory discrimination claims, and what constitutes a sufficiently detailed court complaint under Rule 8 of the Federal Rules of Civil Procedure.

"It's pretty obvious there's a Supreme Court action, congressional reaction process we're in" until either the composition of the Supreme Court changes or the party controlling Congress shifts, said Rosen, a partner with Foley Hoag LLP in Boston.

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## Re-Igniting our Employees' Passion and Drive

By:  
Jim Wiggett  
President of Jackson Hole Group



Going through these tough economic times has forced many companies to downsize and cut costs. At the same time, however, increasingly competitive markets demand higher levels of productivity, quality and customer service. Management is expecting their employees to deliver on some very challenging goals at the very time they may be the most unmotivated.

Under these circumstances, employees often feel vulnerable, often times question the company's commitment to them, and worry about their lives outside of work. It is important to understand that these conflicting dynamics exist and to begin the process of managing them.

As we start on the road to economic recovery, it becomes even more critical to figure out how, and in what ways, you can meet the motivational needs of employees. This will be critical to recharge them and regain their commitment to the company. This is not just a 'nice to do' - this is a need-to-do. There is very powerful data that underscores the direct correlation between the levels of motivation and commitment of a workforce to the business results of the company. We know that improving the levels of employee engagement generally results in a 20%-23% im-

provement in productivity.

The challenge is to figure out what actions you can take your employees find valuable and that will have the most leverage in recapturing the "hearts and minds" of your workforce. This is where you just can't take a "standard" approach to re-engaging your employees. One size definitely does not fit all. What is personally important to one employee may not have the same effect on another. Different motivators will have different effects on people.

The key to learning the right approach is to ask for their input. Use focus groups, surveys or even a town hall meeting that is informal and conversational in tone. Engage your workforce in a discussion about the business, your business goals, and things that may be in their way from getting those accomplished. Employees respond to having a context for information and by being respected enough to engage in a real conversation with the business leaders. Studies often show that the amount of change people can tolerate in a work environment is directly related to the context they have and whether they deem it important to get those results. This isn't about employee perks or trying some clever wall posters. This is about creating a compelling vision of what you are trying to do, communicating it in a convincing way,

and then enlisting your workforce to engage with you to get it done.

There are a lot of dimensions to consider in framing this effort. We have found many different factors have impact -- such as having fulfilling work, a solid relationship with their manager, making valued contributions, having opportunities for growth and learning, having high quality relationships with colleagues or being rewarded for their contributions. We have also seen that these engagement levels have different meanings for employees in different situations. The challenge is uncovering what is most important to your people and how well their motivational needs are being met.

What has been interesting to see is how often companies are totally unprepared to discover the true motivators for their own organization. For example, you might start a dialogue with a group of sales people whom you would have expected to put rewards (i.e. money) as their highest motivator. Instead the sales team describes how energized they are to be selling "green products" and bringing people over from the environmental "dark side".

Or, by speaking with a group of project managers, you find they are frustrated with the long hours they work or the lack of support they receive when they successfully execute complex projects. They do, however, appreciate the team environment they work in and are committed to the success of the project because they are doing it as a team.

Motivators can have very different meanings for different groups of employees. High quality relation-

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## The Long Goodbye – Dealing with Ex-Employees who Breach your Confidentiality Agreements after Separation



By:  
Meghan B. Clark

**M**ost employers have confidentiality agreements with employees who have access to the company's pricing information, client rosters, profit margins, customer purchasing habits, and other information that could be considered a trade secret of the company.

If the scope of your confidentiality agreement includes information the company expects to protect even after the employee is no longer with the company, the agreement should spell out that expectation. When the employee separates from the company, the employer should remind the employee of their ongoing obligations not to disclose protected information.

Ninety-nine percent of the time, departing employees understand their obligations. However, some employees are the gift that keeps on giving, long after separation.

As an extreme example, an employer recently laid off an employee due to a general slow down in business. The exit interview was smooth and the employee accepted a modest severance package without complaint.

About two weeks after termination, the company received notice that the employee had physically accessed a normally locked fil-

ing cabinet in the owner's office and took several protected documents. As the story unfolded, it appeared that the employee knew he was about to be terminated and decided to steal several protected documents. The employee then provided the documents to a previous vendor who was in litigation with the company regarding a contract for sale of goods.

There was no question that the employee violated his confidentiality agreement, but they needed to think carefully about how to approach the problem. First, when responding to this type of crisis, try to obtain as much information about the alleged breach. When someone comes forward with the information that an ex-employee is compromising your confidential information, don't be afraid to ask questions. Find out what information was disseminated. Ask how the information was leaked. In writing? Verbally? Every detail that you can marshal will be extremely helpful when you are drafting your cease and desist letter or your complaint.

The next step is to decide whether the company can successfully negotiate a truce with this ex-employee or whether the ex-employee is so out of control that trying to negotiate will likely just encourage the person to continue to violate

the agreement. If you cannot negotiate the situation to resolution, the company's other option is to file a complaint.

As a practice tip, be extremely careful in your approach to filing a complaint against the ex-employee. If handled incorrectly, filing a complaint in superior court could prevent the company from forcing any and all other employment related issues with the ex-employee to arbitration, if you have an arbitration agreement. The goal should be to get the initial court order to stop the ex-employee's behavior but to preserve the company's right to send all employment related claims to arbitration if the ex-employee later makes a claim against the company.

**Meghan B. Clark is a partner in the Employment Law Group of Nordman Cormany Hair & Compton LLP, Ventura County's largest law firm.**

By:  
**Ken Tiratira**  
Executive Vice President of  
Client Services, Employers Group



Over the last several months, you may have noticed that Employers Group has endeavored to enhance its advocacy efforts on behalf of employers at the legislative, judicial and regulatory levels. In addition to creating a meaningful presence in Sacramento and Washington D.C. via legislative review and opinions, Employers Group has entered into several strategic collaborative partnerships with local, state and national organizations to expand EG's presence and to leverage the collective power of several organizations to influence and impact public policy on behalf of employers.

Nationally, EG works closely with the National Association of Manufacturers and others to track and monitor significant public policy issues such as EFCA, fair pay, leave management and national health insurance reform. At the state level, EG sits on the Board of Directors for the California Coalition for Workers' Compensation, a group solely designed to protect employers' interests with respect to the regulatory and legislative oversight of workers' compensation. Locally, in Southern California, Employers Group is actively engaged with several local chambers of commerce and most notably, with BizFed, a Los Angeles County based Business Federation comprised of over 70 discrete organizations representing well over

150,000 businesses.

Recently, Employers Group completed an organization-wide survey for BizFed, examining business perspectives on a wide range of critically important public policy issues confronting employers. The BizPoll 2009, conducted by Employers Group, represents the third year that EG has compiled a business point of view on challenges that extend beyond the human resources arena. Specific topics that were surveyed include transportation, access to credit, local/city government, business outlook, workers' compensation, access to water and conservation, federal stimulus, health insurance reform, and public pension reform.

Highlights of the survey reveal that southern California will continue to lag far behind the rest of the nation's economy in coming out of this recession. Only 44 percent of businesses surveyed felt that the outlook for 2010 was going to be better than their experience in 2009. A third of all survey respondents indicated that they still anticipate additional layoffs for 2010. We believe that these specific findings communicate that the southern California region will experience a "jobless recovery". Business performance and outlook may improve, but the number of jobs will actually decline. Further, we anticipate that double

digit unemployment will persist throughout 2010 and possibly, well into 2011.

Other notable survey findings reveal that the city government continues to be a barrier for business to thrive. Bureaucratic delays, high permitting fees and increased local business taxes are suffocating small business at a time when innovation and business friendly initiatives are much needed. With respect to federal stimulus, nearly 9 out of 10 businesses indicated that the federal stimulus initiative has passed them by. Less than 10 percent of business surveyed indicated that stimulus was a positive initiative for their business. For health insurance reform, businesses are strongly calling out for some reform, increasing premium costs are hobbling their business operations and competitiveness - notably a significant majority of businesses have little to no confidence that government can impact positive results. Overall, the outlook for business in 2010 reveals that small business and employers will be increasingly challenged to grow and rebound.

To focus government attention to positive job growth and economic development, Employers Group is actively leading and participating in an initiative to create an Office of Economic Analysis within Los Angeles City government. Modeled after an organizational and analytic structure in San Francisco, EG is supporting an initiative that studies government initiatives and to evaluate how selected legislation impacts job growth, retention and sustainability. Based on pre-selected and independent criteria, a jobs and

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## **"I Will Survive" after a Layoff**

By: Emily Green

Outside consultant and contributing author to Employers Group

**I**n the course of my career, I have had to terminate people for misconduct and performance, and I have also watched people leave their jobs at the end of seasoned careers. However, neither of those situations feel the same as a layoff. Layoffs are unique. You have to say goodbye to people that are fully functioning, smart, and capable. You're letting them go because "it's business."

If you are working for one of the thousands of companies that was forced to reduce the number of employees on their team during the economic turbulence of 2008 and 2009, the classic Gloria Gaynor song, "I Will Survive" probably hits close to home. You are a post-layoff survivor.

### **"At first I was afraid, I was petrified"**

If you are anything like me, after the news of the layoff has been released, likely you and your co-workers are in a little bit of shock and awe. Many of those around you may wonder, "How did I not get cut?" Once that shock wears off though, you must quickly find out how to pick up the pieces, streamline your activities, and move on.

The Bureau of Labor Statistics reported worker productivity numbers were up 6.6% in the second quarter of 2009 – no surprise! Businesses around the country are doing the

same amount of work (or more!) with less staff. The sheer volume of work to be done can be daunting and paralyzing.

It can also be the best thing for your career.

### **"I grew strong; I learned how to carry on"**

You may feel guilty or "bad" to admit it, but I am a believer that there is absolutely nothing wrong with taking full-advantage of this unique opportunity for on-the-job training. Chances are, you're doing paperwork or functions that were not anywhere near your radar screen when you started in your position. Do you now have to produce reports using a piece of software you only knew at a "beginner" level? Are you working in or with restructured departments? Good for you! This can be a blessing in disguise for your career. Now is the time to show your stuff.

As many businesses (should) do after a layoff, they are learning how to eliminate wasteful tasks and remove business processes that just do not make sense. You are in a great place to be that voice of change and help evaluate processes. You are the inside expert. You know your business, and you bring a fresh pair of eyes to what needs to be done. You can influence others to think in a way that will make things more efficient. You are the first step in getting your company lean.

### **"I know I will stay alive"...thanks to hard work and a little training**

To get through the next year, you will have to work harder and smarter than before. You are a layoff survivor – someone who has been chosen to stay. Your company obviously values you. If you're in HR, you always want to do what is best for your people. If you or your staff need more training to help do those extra tasks better, know your options when it comes to training.

Along with hard work, training is the best insurance policy to help ensure your job security – or market yourself if you should happen to fall victim to a layoff. Whether it is online training to learn how to use a piece of software or a series of courses you need to attend to be a better leader – training is always a great option. With the end of the year in-sight, you will likely find deals available for your company. If nothing else, it never hurts to ask. Asking for extra help or training does not identify you as "weak" or "incapable", but rather as someone who wants to do the best job they can.

After a layoff, you might feel you are on uncertain ground. The sooner you adopt the "I will survive" mentality, the better for your company – and for your career.



## Worksite Safety and Wellness

By: Stefanie J. Nobriga  
Loss Control Consultant  
Wellness Consultant  
Bolton & Company  
Pasadena California



### Introduction

**W**hat is Wellness? The answer is different for each of us although I like the definition written by wellness advocate David B. Ardell, PhD, who says, “Wellness is a choice to take responsibility for the quality of your life. It is a mindset, a deep-rooted value or principal. If acted upon, wellness, will give you great satisfaction and high levels of well-being”. For some wellness is simply a state of mind while for others it is a physical although for most businesses it is a means to an end. Healthy employees can perform better, are more content and less likely to become injured. Workplace health promotion consists of an ongoing effort to optimize individual and organizational wellness. UCI’s Workplace Health Promotion information guide defines health promotion as “the science and art of helping people change their lifestyle to move toward a state of optimal health”, which involves

the whole person. The guide defines optimal health as “a balance of physical, emotional, social, spiritual and intellectual health.”

### Why Safety and Wellness?

Among wellness professionals, safety has had a significant roll in wellness in the workplace for many years. Their opinion is based on research and statistical data from many major corporations with ongoing Wellness programs. There is more and more research that supports the need for businesses to incorporate Wellness into their ongoing safety efforts. These studies focus on the use of exercise programs in preventing musculoskeletal injuries, stress reduction and mental wellbeing. This is an area that has been long overlooked by safety professionals and for that matter the entire safety community, however with all the overwhelming evidence that wellness can help to prevent industrial injuries, the need for

safety professionals to educate themselves on the how to assist their clients is imperative. The first Surgeon General's Report on Physical Activity and Health (1996) notes: "People of all ages can improve the quality of their lives through a lifelong practice of moderate physical activity." The same report also states that "more than 60 percent of American adults are not regularly physically active. In fact, 25 percent of all adults are not active at all." With modern technology, (i.e. Internet, E-mail, computer games) and a society that is continually developing faster, better, more convenient ways of doing business and buying goods and services it is not surprising that the diet and health club industries are booming. We claim to be too busy to exercise and continually seek ways to avoid "doing it ourselves". Recent studies by the American Red Cross indicate that a one out of five adult in the U.S. is overweight. 20 to 30% are in the obese range. According to the Journal of Epidemiology, children weigh more today than in 1973. High fat diets (fast food) and lack of exercise are the causes cited. What does this say about our society and what we are teaching the future workforce? Teaching today's workforce about health and fitness through work site programs can assist employees to teach their children (our future workforce) about health and fitness as well as encouraging employees to take responsibility for their own health and wellness. This means a healthier and more productive workforce.

## Statistics and Studies

Statistics can make a case for both Worksite Wellness Program and Safety Programs so why not integrate the two programs? According to The Bureau of Labor Statistics (BLS) back injuries account for one of every five injuries and illnesses in the workplace. Direct costs of treating low back injuries in the U.S. is estimated at between \$25 - \$65 billion/year with indirect costs in wage replacement and productivity losses estimated as another \$50 - 106 billion. We are aware back injuries can be minimized through lifting correctly, stretching and strength training as well as ergonomic controls. But do you know that stretching and exercise helps to reverse

much of the damage from back injury? Gentle stretching can make scar tissue become more flexible, supple, stronger, or absorbed and replaced by more normal ligament and muscle tissue. Strengthening the muscles around this area (core muscles) can produce good muscle protection to prevent a re-injury and more importantly, initial injury. The BLS also reports that ergonomic related injuries are the most rapidly growing category of work-related illnesses reported to OSHA, furthermore repetitive motion injuries account for 25% of all injuries or illnesses involving days away from work. With repetitive motion injuries on the rise it is wise for businesses to seek new and innovative ways to prevent ergonomic injuries from occurring.

The statistics above seem to increase over the years instead of decrease. Safety professionals have an arsenal of tools we use such as ergonomic programs, back programs, engineering controls and equipment but the statistics are still on the rise. What are we missing? When we realize that most American's will spend 50% of their lives in the workplace coupled with the fact that we as American's are getting heavier and heavier each year, the picture becomes clearer. More time spent in the workplace and less time to devote to our personal wellness.

Why should business owners and managers be encouraged to implement and integrate Worksite Wellness Program's and Safety Program's? Because of studies such as the one out of Arlington Heights published in ACOEM (American College of Occupational and Environmental Medicine) that studied the lifestyle factors of 683 workers in various occupations. All participants completed health risk assessments. The risk assessments rated physical activity, estimated fitness and obesity. What the study found was that physical activity and physical fitness had a significant impact on work performance and further, the more physically active the higher work quality and better overall job performance was reported. On the other hand, obesity had a significant, negative impact on work. Twenty-two percent of the workers studied were classified as obese and 4.5 percent were classified as severely

obese. It seems logical that safety and wellness can work hand in hand given the facts of this study. ACOEM has been recognizing organizations since 1996 that demonstrate achievement in employee health, safety, environment and management. The title of this award is "Health & Wellness in the Workplace": Lessons and Best Practices. Organizations such as Dow Chemical Company, GE Power Systems, IBM, The Boeing Company, and Johnson & Johnson have all been past recipients of this award. All have comprehensive Safety and Health programs and all have Wellness as an element of their programs. These large corporations are leading the way but what about the mid to small sized organizations with limited resources and people to implement a Wellness Program?

## What Works and How To Start Up

Small to medium sized businesses can implement an effective wellness program but as with any program you will need to do some homework prior to starting up and you will need to devote some resources to the program. For instance, if your business has a high incidence of back injuries in a physically demanding industry, you may want to implement a stretching and education program. An office environment may indicate a walking program or ergonomic exercise program. You should also evaluate the overall health of your workforce. Do you offer health insurance? Many carriers offer assistance with Wellness programs and can track the success of the program. If you do not offer health insurance or you do not want to involve the insurance carrier you may choose to use a Health and Wellness vendor that can develop a program and tailor it to your budget and needs.

AWHP, (Association for Worksite Health Promotion) has a Healthy Worksite manual. Here are some points to consider when implementing a wellness program.

- Structure – number of employees, management levels and management style.

Other considerations are to keep it simple and target four main areas for an effective program.

- Target health/injury risks – Stress, lifting and ergonomics
- Establish Resources – where to get the information? YMCA, internet, vendors
- Build social support – volunteers in the community
- Organizational support – volunteers within the organization to run with the ball.

To build an effective wellness program you must embrace what has been tried and continues to hold true. According to AWHP (Association for Worksite Health Promotion) the following are key components for building effective wellness programs.

1. Assessing the Worksite
2. Resources: Define Mission and Budget
3. Set Goals to Measure Results
4. Proactive Outreach of Services
5. Worksite Culture: Adapt Services to Locations
6. Measure Results
7. Set the Stage for Future Change

The seven steps listed above is another tool for creating a successful Wellness Program. Detailed information on these steps can be found in AWHP's, Creating a Healthy Worksite manual.

## Tools and References

Wellness information can be found on the internet by using a search engine. Many organizations have free downloadable information such as fitness newsletters. Other websites are dedicated to news and information on dieting and exercise and some even have tools such as BMI (body mass index) calculators and tables to calculate your total body fat which is deemed a reliable indicator of total body fat. Of course there are a growing number of vendors that are dedicated to developing, implementing, tracking and running wellness programs and have valuable tools such as the health risk assessments and biometric screening. They have the knowledge




and tools and although management must be on board with the concept and own the program these vendors can make your job much easier.

## In Summary

In October of 2004, NIOSH (National Institute for Occupational Safety and Health) created a task force and held a symposium on "Steps to a Healthier U.S. Workforce". This "landmark" event was cosponsored by the ASSE (American Society of Safety Engineers). The task force is focused on bringing together leaders in wellness and the safety community and determining how to integrate wellness and safety. In the near future wellness should be an element of every safety program and considered imperative to

an effective program. With so many changes in the workforce such as the aging boomers and sky rocketing medical costs we cannot ignore wellness as critical tool in controlling costs and industrial injuries.

What is clear from all that has been presented thus far on this subject is that this concept is in its infancy. Our vision should be to find solutions to help reduce the human and economic costs of industrial injury and illnesses. . One last word of advice, as with any safety program, management or owners of a business must embrace, support and encourage involvement in a Wellness Program. 

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# DC Plan Sponsors Must Determine 70.5 Minimum Distribution Policies by Nov. 30, 2009

The Internal Revenue Service (IRS) issued new guidance September 28 on the minimum distribution rules governing retirement plans. Sponsors of defined contribution plans have until Nov. 30, 2009, to make key decisions, although any actual plan amendment may be delayed until the last day of the 2011 plan year. The key decisions facing employers are:


- Whether to give plan participants the option to waive required minimum distributions from a defined contribution plan for 2009
- Whether the plan will accept rollovers of amounts that were previously distributed, under the required minimum distribution rules, but for which distribution could have been waived
- Whether to inform participants who are first subject to the minimum required distribution rules in 2009 of their distribution options

Participants who received required distributions in 2009, but before Oct. 1, 2009, have until Nov.

30, 2009, to roll over such distribution to an eligible retirement plan or IRA, even though the normal 60-day rollover rule has expired.

If you take no action, distributions will be made in accordance with your in-force plan document, which generally does not allow for a waiver.

The Worker, Retiree and Employer Recovery Act of 2008 (WRERA) permitted participants to waive the required minimum distributions from defined contribution plans to avoid further damage to retired participants that had been adversely impacted by the bad equity market. The law permitted a waiver of the minimum distribution requirement to allow retirement accounts time to recover a portion of the loss.

IRS Notice 2009-82. 



## INTERMITTENT FMLA LEAVE: CURBING ABUSE

by  
**Matt Bartosiak**  
Senior Consultant

**B**oth the Family Medical leave Act (FMLA) and the California Family Rights Act (CFRA) allow eligible employees to take time off on an intermittent basis or on reduced leave schedules. Under FMLA, intermittent or reduced leave schedules are mandated only for a serious medical condition. For other qualifying reasons, the FMLA does not allow intermittent or reduced leave schedules without an agreement between the employer and the employee. In contrast, the CFRA allows intermittent leave leaves or reduced leave schedules for the following qualifying reasons

- The serious illness of the employee or the employee's spouse/domestic partner, child, or parent. Domestic partners are covered under CFRA, but not FMLA;
- Military caregiver leaves and leaves for a qualifying exigency, and
- Leaves taken because of birth, adoption, or placement of a foster child. However for these specific leave instances, the CFRA

places parameters on time increments used. Such leaves generally must be taken in two week increments, but on two occasions the employer must allow leave to be taken in less than two week increments.

The above explanation may be especially useful for employers with employees in other states – be sure to check if those states have their own family and medical leave requirements. For California employers, the bottom line is that family and medical leave on an intermittent or reduced schedule basis may be taken for any qualifying reason and, for certain types of leaves, the employer may generally require the leave be taken in two week increments.

Perhaps the most challenging leave for employers to manage is intermittent leave for a serious illness. Before discussing strategies concerning these leaves, let's be clear about some leave definitions. A reduced leave schedule is a leave

schedule that reduces an employee's usual number of working hours per workday or work-week. It is usually a temporary change for the employee from full-time to part-time. In contrast, intermittent leave is taken in separate blocks of time rather than one continuous period of time. In both types of leaves, the increment of time used to measure how much leave is taken is one hour or less, depending on the shortest period of time that the employer's payroll system uses to account for absences or leaves.

The Employers Group Consulting Helpline receives many calls concerning family and medical leaves. Questions range from eligibility rules to certification requirements to notice requirements ....the list goes on. While these requirements can be mastered and systems put in place to administer these leaves, it is the use of intermittent leaves for a serious illness that pose problems and uncertainty for employers. These leaves usually are taken piecemeal, with no advanced notice to the employer. While the intended purpose of these leaves is honorable, too often they are abused.

The following strategies should help reduce intermittent leaves taken for invalid reasons. They should also help employers honor valid intermittent leaves while having a less intrusive effect on operations:

**Certification:** Provide the doctor with a job description or a list of essential functions. This allows the physician to have more complete information regarding the employee's ability to perform essential functions. If the leave is for the employee themselves, the employer has the right to obtain a second opinion where clarification is needed, if the initial health care provider does not provide the certification. The employer cannot use the same doctor that the employee uses. . The employer may not ask for a second opinion concerning the serious illness of a family member.

**Certification Form:** Make sure all required information is given on the form, including a Time and Date Treatment Schedule (if possible) and the

notation of the minimum amount of time needed for the leave. Place the burden on the employee to obtain any missing information and inform them if complete information is not provided on the form, then absences will be treated as non-FMLA/CFRA related. Under FMLA, if this information is incomplete or deficient, the employer must state in writing the required information needed and give the employee seven (7) calendar days to provide the necessary information. Additional time for the employee to provide the information is possible if, within the seven (7) day period, the employee notifies the employer they are unable to obtain the additional information, after a good faith effort. There is a form for the federal Family Medical Leave Act, however, information requested on the federal form regarding diagnosis and prognosis cannot be solicited concerning California employees. When requesting certification, recertification, or any other information from the health care provider, always work through the employee. The employer needs the permission of the employee to communicate directly to the health care provider.

**Recertification:** Both FMLA and CFRA allow employers to require re-certification after the expiration of the originally estimated duration of the leave. Under FMLA rules, absence due to pregnancy, chronic, or long term conditions, may generally require recertification after every 30 days in connection with an absence, unless the minimum duration of the leave is more than 30 days. If the leave is for longer than 30 days, certification cannot occur before the period of time expires, unless circumstances described by the original certification change significantly or the employer receives information that casts doubt on the continuing validity of the claim. In all cases, the employer may request recertification every six (6) months, even where the certification states a longer period.

With CFRA, California's Fair Employment and Housing Commission (FEHC) does not have such detailed related rules. In some cases, it has no comparable rules. The Commission has stated its intention to publish interpretations of these federal rules, however. In the meantime, the



Commission has published a comparison FMLA/CFRA chart which compares all leave components: [www.fehc.ca.gov/pdf/FMLA-CFRAReg-sTable-2.pdf](http://www.fehc.ca.gov/pdf/FMLA-CFRAReg-sTable-2.pdf)

**New Certification:** Request a new certification for each 12 month period.

**Medical Appointments Scheduling:** Employees who take intermittent leave for planned medical treatments have an obligation to make a “reasonable effort” to schedule treatment so as to not unduly disrupt the employer’s obligations. Although the FMLA regulations do not clarify what constitutes a “reasonable effort”, you the employer should insist that the employee cooperate with you in scheduling medical appointments outside of their work schedule. Also, you should insist the employee try to schedule medical appointments so as to cause as little disruption as possible to business operations. Be sure that you do the same for non-FMLA/CFRA medical appointments that approach the same number of appointments needed by the employee.

**Possible Transfers:** The employer is allowed to temporarily transfer the employee to a position that is less disruptive to operations. Pay and benefits must remain equivalent to the previous job.

**Patterns of Abuse:** Look for patterns of abuse such as the employee predominantly being out on Fridays and Mondays. If a pattern exists, request a recertification. When requesting recertification you may note to the doctor the pattern of absences on Mondays and Fridays. Then ask the doctor if this pattern is required by the serious illness. If the answer from the doctor is “No”, you need to request more details. Sometimes, telling the employee that such information may be provided to the doctor will reduce any abuse.

**Termination:** The employee can be terminated if the employer has convincing evidence that the leave was obtained fraudulently. This will send a message to other employees thinking of fraudulently obtaining FMLA/CFRA. However, always

do a careful analysis to see if the evidence will stand up in court.

- **Question Each Absence:** When the employee calls in regarding an absence, ask the reason for the absence. The employer cannot ask for specific medical information, but if the reason given is not stated as FMLA/CFRA related, then the absence need not be excused under those protections. The employer can discipline for non-protected absences.

**Deductions From Pay:** Hourly deductions from an exempt employees salary are allowed under federal law when the employee is on FMLA. California’s CFRA also allows hourly deductions from an exempt employees salary, but the employee must be on CFRA and FMLA concurrently. Another option under both federal and state law concerns employees on a reduced leave schedule. For these employees, the employer could negotiate/establish a new fixed salary that would not fluctuate according to leave taken.

**Forcing Vacation/Sick Leave:** Generally, under both FMLA and CFRA either the employer or the employee can force the use of vacation, PTO, or sick leave during these leaves when the leave is unpaid. Due to a 7th Federal circuit court decision, where the employee receives disability pay (including SDI and worker’s compensation benefits), then the leave is not seen as “unpaid” and the employer cannot force the use of vacation, PTO, or sick leave.

Two additional notes: (1) California does have an exception for Pregnancy Disability Leave (PDL). In these situations, the employer may never force the use of vacation or PTO—it is always the woman’s choice; (2) The employer does not have to allow the employee to use sick leave in a situation in which the employer would not normally allow the use of such paid time.

**Health Insurance:** Both FMLA and CFRA mandate that the employee on leave is allowed to continue their health insurance at the same active employee rate they paid before the leave. If the health insurance is not continued, or if it is

cancelled because of non-payment, no COBRA is offered until the end of the leave. Furthermore, CFRA does not mandate the continuation of health insurance if, within the last 12 months, the employee was covered for 12 weeks under FMLA. For leaves qualifying only as PDL, there is no health insurance continuation mandate. These individuals may be immediately offered COBRA.

**Employee Premium Share:** Many companies have a health plan contract where, if the employee is covered for any part of month, they are covered for the entire month. Depending on when the employee goes on leave, or terminates employment, this can result in the failure of the employee to pay their full month's premium share. A solution for this is to have the employee authorize a deduction of the full month's pre-

mium share from the last paycheck when they sign-up for health insurance. Remember, all employee authorized deductions have to be stated in the exact dollar amount. This is a commonly asked question received by the Employers Group Helpline Consultants.

**One Last Tip:** Are you tired of making a "hundred" calls to employees who don't show up for work on the designated return date? In your leave notices, clearly (in bold) state if the leave is extended by the health care provider, then the employee must contact HR before the original return date and ask if the extension has been received. You can state that failure to do so may jeopardize the extension requested. Also, review this verbally with the employee during the leave administration process. This can save you a lot of "chasing around". ☺

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MOMENTS OF TIMELESS PLEASURE®

## The Brand Called *You*

Transforming HR from company cop to valuable resource

By Peter Montoya



**H**ave you ever wondered why you get perceived as the “bad guy” when you’re in human resources to help people? Have you ever wondered why some employees view you with doubt and skepticism? Have you ever walked into the break room to find conversations ending and nervous glances coming from the corners of your coworkers’ eyes?

The title of “office cop” has become an unfortunate “brand identity” for the vast majority of human resources professionals. Unfortunately, the preconceived notions and stereotypes rampant in the industry don’t help you accomplish your job.

### Creating a Better Workplace

The brand you’ve been handed doesn’t improve your job satisfaction and may ironically create an uncomfortable work environment. But that doesn’t have to be the case. Instead of accepting the negative identity you’ve been handed, you can take your personal strengths and create a new, unique iden-

tity that will make you more effective professionally and make you happier in your job. It’s called Personal Branding.

Dynamic human resources professionals are working to break out of the mold and revolutionize their career field. By communicating their roles as facilitators and helpers, they provide better services to clients and improve their work environments. The process requires some work, and occasionally some deprogramming – but in the end the brand you develop is a better fit for your professional objectives, and will make each day more rewarding.

### Put *You* First

Because the very letters “HR” can immediately turn off fellow professionals, the first step to improving your career requires that you stand on your own. You must think about your personal strengths, weaknesses, and character traits. You have to look at yourself and see how you break the stereotypes that people might associate with your field. Know-



ing your audience empowers you to draw commonalities and promote your personality before your job title.

Then, at orientations, briefs, training sessions, and other events, you can promote yourself and the agenda that are the foundation of your brand. Daily, you can look for ways you stand out as a unique, valuable asset to members of your organization. You then work to present a consistent Personal Brand that fights stereotypes and fills a beneficial position in the hearts and minds of your fellow employees.

There's nothing stopping you from building a Personal Brand identity that's as effective as Charles Schwab, Oprah Winfrey, or Michael Jordan, on a smaller scale. You can be an in-house celebrity. The fundamental principles that you must follow in building your Personal Brand are:

- *Differentiate yourself.* Schwab and others started out by hanging their marketing hats on an attribute or characteristic that made them different from their competitors. As a HR professional, you can highlight your drive to help people succeed, your personable approach, the level of service you wish to provide, or your expertise in a certain facet. Pick something that sets you apart from others and begin there.
- *Create a position.* Your position is the place you occupy in the minds of your prospects. Decide what position suits your background, abilities, and audience, then focus on building your brand identity around driving that position home.
- *Consistent and persistent.* Once you've determined your position and your differentiator create your brand by advertising yourself—over and over. Newsletters, memos, speaking engagements, meetings, office functions, company websites—use any medium available to communicate your name, your identity, and your message to the target audience.
- *Customize your services.* Once you've built your brand, begin changing – evolving – your service style, attitude, and approach to fit your identity. If you preach personalized services, you need to qualify your identity by promising to offer a specified amount of one-on-one time with coworkers. If you talk about your commitment to improving employees, start a program that helps them.

## Branding in Action

The stereotype of “company cop” isn’t career specific to Human Resources. James McDonald, a security guard company owner in California’s Inland Empire, had been having a difficult time developing a positive reputation at the businesses where he had posted security guards. The employees at the businesses he represented regarded his guards as “wannabe cops.” “They thought protection services was a joke,” said McDonald. “Our accounts were shrinking and we were constantly turning over our guards.”

McDonald needed to change the way he was doing business. One of his guards suggested he change the way he does business. People didn’t respect the guards because they didn’t know them and they didn’t understand their capabilities. Because the guards weren’t respected, their morale was low and their performance suffered. It was a vicious circle. McDonald had read a column in an entrepreneur publication about Personal Branding. He started introducing his guards to company executives. He improved their uniforms and encouraged them to learn the first names of the people who came and went during their shifts. In direct contrast to industry standards, McDonald increased his guards’ salaries and spent more on training.

“It seemed so basic, but once the guards had turned a corner in their behavior and interacted more with our clients, their value to company owners, performance, and morale soared,” said McDonald. “They weren’t faceless, unwanted ‘rent-a-cops.’ They were valuable members of the team who greeted people on their way into work.” As a result of Personal Branding training, McDonald had improved his workforce and positioned his company as a resource for quality security professionals. Over the course of 12 months, the company was awarded four new contracts – increasing their business by 25%. The company was able to increase the amount they charged clients because they stood above the competition.

## A Single, Powerful Idea

Combine a personal connection with a memorable slogan and you’ve got something. A slogan is a single, powerful phrase that captures the essence of your position, your personality, and your services. Slogans like “Just Do It,” “Don’t Leave Home With

out It,” and “The Ultimate Driving Machine” have become part of popular culture, showing the power of a memorable slogan.

In creating a slogan for your profession, focus on a simple, concise statement that captures you as a person. You don't have to necessarily use your personal slogan on your resume, but you should use it to focus your behavior and to maintain a consistent identity. You could think of your slogan as a positioning statement – a sentence or two that sets you apart from other people in your field and makes you a valuable asset to your boss and the people around you. One of the core principles of Personal Branding is making your message unique to you, and for that you need a unique slogan and approach to promoting your identity.

### The Master Plan

A thorough personal marketing plan is the first step in any successful marketing program. Sadly, it's a step a lot of professionals ignore. A marketing plan takes time to create and revise, and that's time that many busy professionals simply won't invest. If you want to brand yourself properly and focus your Personal Branding efforts wisely, invest the time as carefully as you invest in any other important facet of your business.

Some elements of a useful marketing plan:

- **Budget.** How much are you going to spend on your Personal Branding campaign? It's shocking how many people create a plan without any coherent idea of what they'll be spending. Look at your marketing budget as a percentage of your total income, and plan on spending a healthy amount to improve, maintain and promote your Personal Brand. Everything you do or say communicates your Personal Brand – for better or worse. The way you dress, walk, talk, react, interact – everything you do sends a message to your coworkers and employer. Develop a budget to adequately handle direct and indirect Personal Branding.

- **Strategy.** What are your goals? What is your time frame? Who are your competitors, and where are they failing to meet the needs of your target audience? The answers will help you determine a strategy. The broad plans you have for your business; the growth goals, where you'd like to be in five years, and so on. List them as specifically as possible and

then outline how you'll get there. If you're sick of being seen as Corporate Gestapo, you're going to have to have a strategy to change your identity.

- **Tactics.** Would a personal website help people get to know you better as a person? What about a brochure? It might sound crazy at first, but imagine what influence you could have if you actually developed a Personal Branding campaign. If that seems over the top, think about the resources you have available – company wide e-mails, newsletters, employee websites ... know what tools you have that can help you promote your Personal Brand. Evaluate each marketing channel at your disposal and focus your efforts to make a difference.

Some people think that a marketing plan is for those who are already successful. In reality, it's what people do to become successful.

### Marketing Always Has an Effect

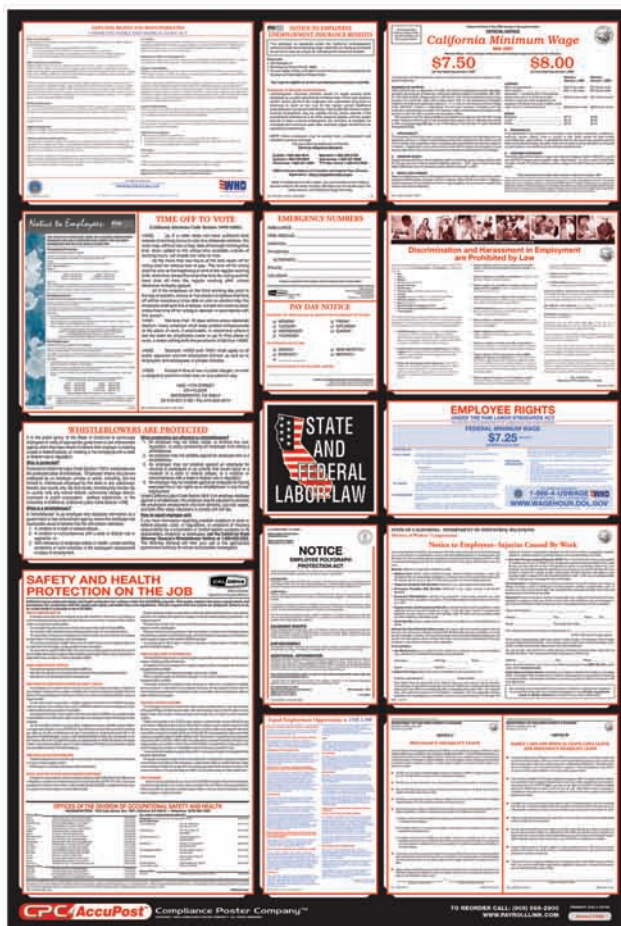
The trouble you'll take in creating a marketing plan, developing your position, and promoting your Personal Brand is well worth it for one big reason: marketing is never without effect. It either enhances your image or makes you look ridiculous. Proper Personal Branding, given a year to work its magic, will turn you into a brand that endures even when you have to make the tough decisions that can make you unpopular amongst your coworkers.

(Editor's Note: For more information about Peter Montoya, contact EG's Editor at [newsletter@employersgroup.com](mailto:newsletter@employersgroup.com), or visit [www.petermontoya.com](http://www.petermontoya.com).)

*Peter Montoya, magazine publisher, author, speaker, trainer, and founder of Peter Montoya, Inc., the only advertising agency solely dedicated to “personal branding,” is a leading authority on the subject of how one develops, builds, and maintains an individual—as opposed to corporate—name brand. He conducts over 100 seminars annually, helping professionals, entrepreneurs, and executives see themselves as a unique brand. He launched Personal Branding magazine and is the author of The Personal Branding Phenomenon. Employers Group invited Peter to address how an HR manager can develop a personal brand to more effectively reach his or her constituents in the workplace,*

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- **Who needs to post the EEOC with the new GINA Act?**

ALL employers with 15 or more employees must post the revised Federal EEOC notice that includes the new mandatory GINA provisions.

- **What do employers need to do in order to comply?**

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# H1N1 IN THE WORKPLACE



By: Monica Diaz  
Communication & Marketing Specialist  
American Red Cross  
of Greater Los Angeles

**A**s we face the possibility of a wider H1N1 (swine flu) influenza outbreak, it is important to make preparations to minimize the disruption of flu related absenteeism in the workplace. A pandemic flu outbreak can affect up to 40% of a businesses workforce during periods of

peak infection.

The American Red Cross suggests the following tips to promote the health of employees in the workplace.

## MAKE PLANS TO PROTECT YOURSELF, FAMILY AND CO-WORKERS:

- Immunize yourself against the seasonal and H1N1 flu viruses.
- Find out your employer's contingency plan for running the business with limited staff due to absenteeism. If you are the employer, develop a plan. Request details on any special considerations regarding sick leave, benefits and wages if staying home.
- Ask your child's school or day care if they plan to encourage sick children to stay home during a flu pandemic or if they will close, requiring children to remain at home.
- Stay informed. Check your local chapter of the Red Cross ([www.redcross.org](http://www.redcross.org)) for H1N1 updates and recommendations.

In addition, the American Red Cross suggests creating a preparedness kit that will help you respond to an emergency even if you become ill:

- Store a two-week supply of food, water (one gallon per person/day) and household necessities. Make sure to include extra for your pets.
- Store a supply of any nonprescription drugs, such as pain relievers, cough and cold medicines, stomach remedies and anti-diarrheal medication, as well as vitamins and fluids with electrolytes (such as sports drinks).
- Store health and cleaning supplies, such as bleach, tissues, a thermometer, disposable gloves, soap and alcohol-based hand sanitizers.
- Ask your health care provider and Health Insurance Company if you can get an extra supply of your regular prescription drugs and medical supplies, such as glucose monitoring supplies.

## REDUCE THE SPREAD OF FLU IN THE WORKPLACE:

- Wash hands often with soap and water. Be sure to create friction between the fingers. Alcohol-based hand sanitizers are also effective when soap and water are not available.
- Avoid touching the eyes, nose and mouth as

germs spread easily this way.

- Cover nose and mouth with tissue or sleeve when coughing or sneezing. Throw the tissue in the trash after use.
- If you do not have a tissue, cough or sneeze on the inside of your elbow. Avoid doing so on your hands where you are likely to communicate germs with other people.
- Frequently wipe down work areas and shared objects such as light switches, door handles, phone receivers with sanitizing wipes.
- Avoid close contact with people who are sick.
- Sick employees should stay home when they are sick, rather than coming to work and infecting co-workers. Make sure your managers set the example and remain home from work when illness or symptoms appear.

## KNOW WHAT TO DO IF YOU BECOME ILL:

The symptoms of H1N1 include: fever, sore throat, coughing, body aches, runny nose, vomiting, nausea, diarrhea and fatigue. These symptoms are similar to that of other respiratory ailments and the only reliable way to diagnose your illness is to consult a physician. If you develop these symptoms, you should isolate yourself and stay home. Use the kit you prepared to make yourself comfortable while resting. To avoid spreading your illness to others, stay home for 24 hours after your fever subsides. Seek medical attention if your symptoms persist or worsen.

The American Red Cross and its partners will continuously monitor national data on the severity of the H1N1 pandemic and make additional recommendations as needed.

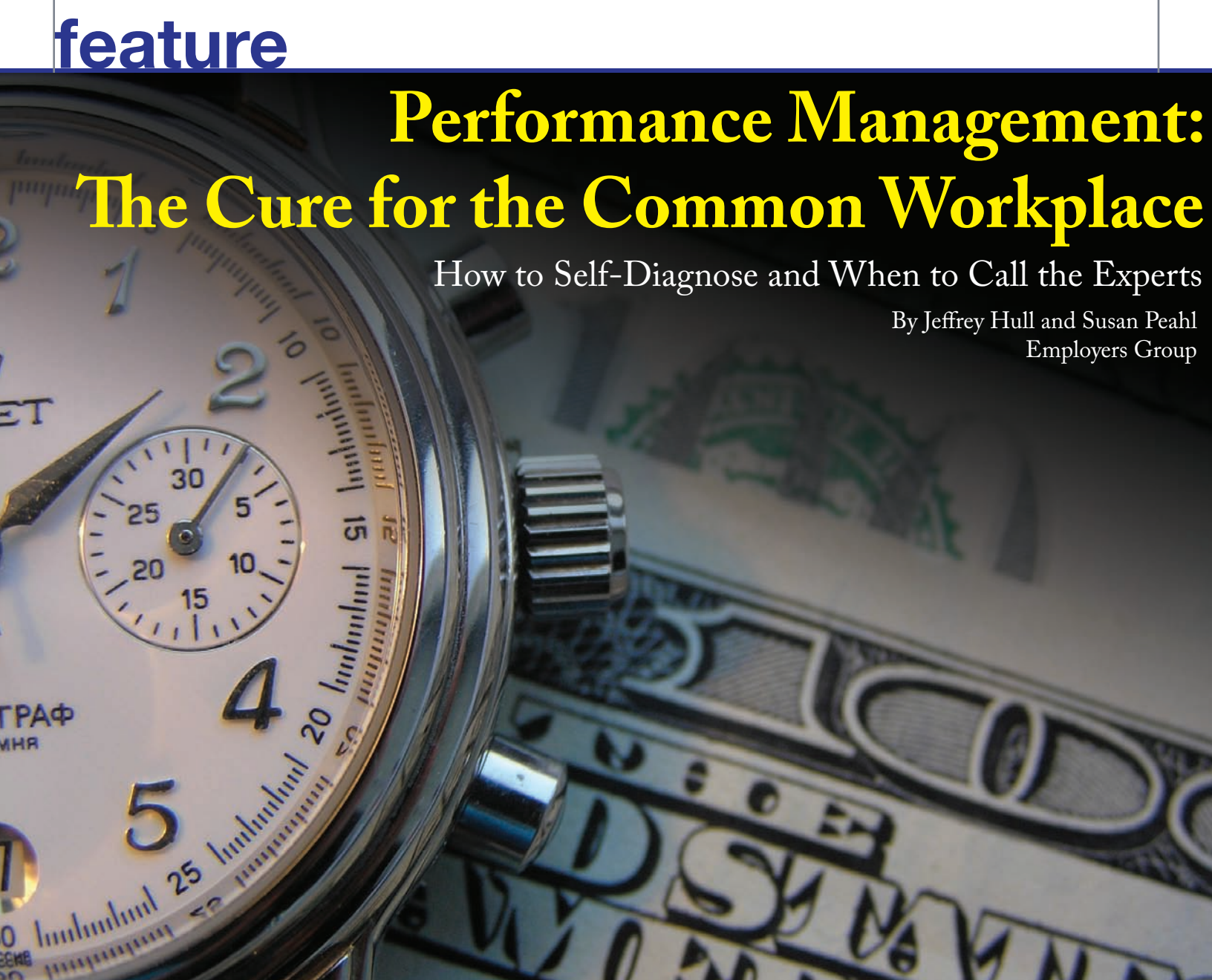
Post this information about swine flu in employee break rooms and distribute via e-mail. For more information on preparing and protecting your workplace from the pandemic flu Red Cross seminars are now available. For more information contact (310) 445-2688 or email [alvarezl@arcla.org](mailto:alvarezl@arcla.org).



# Performance Management: The Cure for the Common Workplace

How to Self-Diagnose and When to Call the Experts

By Jeffrey Hull and Susan Peahl  
Employers Group



**W**hat happens when a patient, who knows and feels something is wrong inside, chooses to prescribe their own treatment? The patient runs a high risk of a misdiagnosis and incorrect treatment, putting themselves at risk for greater harm.

The same thing happens when a company decides to give their employees training, but doesn't consult with a training specialist. While many companies think they can self-diagnose and make the best recommendations for their employees, they often overlook the underlying symptoms that are causing the problem. Training Self-Diagnosis happens all too frequently. Is this how your company treats training and develop-

ment? If so, you are not alone. This article could be all about advising you not to try and fix your own problems, but rather, we're going to take a different approach and let you know how you can help yourself – but also know when it's time to call in an experienced training professional.

Spending money is a typical hindrance for most organizations. Most HR professionals are tasked with trying to cure any ailments internally. How do you know if you're asking the right questions? Are you overlooking any questions that might help you get to the heart of the problem? Here is insider information that the Training Specialists at Employers Group utilize in treating our patients (clients):



## Identifying Your Symptoms:

Self-awareness of your company's needs is critical. You'll need to know how to take the pulse of your employees and analyze their symptoms. Similar to a patient having the "common cold", their symptoms can be alleviated by a simple over-the-counter remedy. The most common workplace troubles can be handled in-house and are often cured by implementing some standard practices within your organization.

When a training specialist here at Employers Group is asked to sit down with one of our patients (clients), we ask some routine check-up questions. The first level of questions can be called the "Performance" Symptoms." We ask our patients the biggest "development" issues each level of the organization is facing?

- Do supervisors wish employees would be more motivated and engaged?
- Does management wish everyone would act more "professional"?
- Is the Human Resources Department having difficulty implementing and enforcing company policies and procedures?
- Are performance measurements clear in articulating accountability and communicating organizational goals?
- Are employees feeling resentful that they are taking on more work without appreciation or acknowledgement?

Then we examine a bit deeper by changing up the questions by looking for "Tell-Them" Symptoms. Think of it this way – if you were having a candid one-on-one conversation with a trainer, what would you tell them to tell trainees? Here are some examples of common symptoms we hear from our patients day-in, day-out:

- "Please tell them how to write a proper email, including who and when to cc, what is proper email etiquette, and how to be concise.
- "Please tell them it is normal expectation to work the entire time you are at work (except for breaks) and that there is an expectation

of quality work."

- "Please tell them that it is okay to go to their manager when they've made a mistake or need assistance."
- Please tell them that their continued tardiness in completing tasks is preventing the department from getting product out.

## The Miracle Cure:

When Training Specialists hear a combination of these symptoms, our diagnosis is clear: This company has Performance Paralysis. The good news is that Performance Paralysis is curable in-house. How? Through the creation of accountability programs that incorporate performance management.

Crafting a performance management program is, perhaps, the most critical tool for all levels of management. Unfortunately, it is often the least understood and least used. Quite a paradox when you consider it is, by far, is the most cost effective way to change behavior, increase skills, and improve attitude across your organization.

What is performance management (PM)? Contrary to what many may believe, it is not the yearly performance evaluation. Unfortunately, many supervisors, management leaders and even those in Human Resources operate with this concept of performance management in mind. Performance management can be defined by:

- Setting clear expectations and consistently communicating performance goals.
- Making those in leadership positions accountable for effectiveness – every day.
- It is top-down in structure. Those in senior-level positions should be leading by example and not simply proclaiming their allegiance to the cause.
- Leaders should empower, not micromanage or provide stop-gap support.
- Two-way communication, requiring both management and staff to own the solution created for the common-good of the company.

Ask yourself, "Is performance management ingrained within your company's culture?" If you

have even the slightest doubt, maybe everyone just needs to be reminded of it. Again, through top-down communication and setting expectations for everyone, you can get problematic symptoms cured over time. If there is no accountability, you will have little support for your programs. If you're experiencing gaps in skill-sets or if employee behavior needs to change, training can then be a valuable addition to practicing performance management.

### Be Aware of Additional Symptoms

Sometimes it helps to treat individual symptoms of your overall performance management program. Here are some additional performance management-related issues that correlate to commonly requested training topics. If you think you need:

- **Time Management:** Ask yourself: Do you have several employees that suffer poor communication? Do you have processes that need to be streamlined? Is it poor meeting skills, lack of respect for each other's time, or not telling the customer what you need? If these are the types of questions you can't answer, you might consider looking into Lean Process training or Communication Skills for your employees. If your employees need help implementing or using time management tools (such as day planners), a course in time management skills and practices may be in order.
- **Conflict Resolution:** Ask yourself: Is conflict occurring because we are not clear with our direction, expectations and accountabilities? These are directly correlated to not using a performance management system? Conflict may also be a result of poor leadership or interpersonal skills, in which case a specific development program can be prescribed by an outside expert or mediator.
- **Adapting to Change:** Ask yourself: Was change just plopped onto employees without a proper communication plan? Were employees a part of the decision? How often is change communicated? Do employ-

ees know their role in adapting to change or will they be allowed to continue to complain? A prescription might include helping executives understand change management best practices and how to assist employees in dealing with the most recent change.

- **A Lesson in Professionalism:** Ask yourself: Is management communicating what they really need from an employee? Most employees really want to do a great job; however, supervisors may not be helping them shape the behaviors and skill sets to grow within their position. The training specialist may recommend training your company's supervisors in leadership skills, communications and teamwork and then examining whether or not employees need training in understanding how they can participate in their performance management.

The key item: The more employees are involved in the decision process, the more buy-in and enthusiasm for success you can expect.

### When to call a professional:

Creating healthy best practices, rather than trying to find the magic pill, will create sustained health for the organization. Have you had a training and performance specialist survey your organization, employees, supervisors, managers and senior leadership to identify their susceptibility to illness? There may be significant symptoms apparent that can only be identified by a trained outside eye. Too often those closest to the issues (inside the company), cannot see the forest through the trees.

If you question the effectiveness of your Performance Management program, seek the assistance of a performance management and/or training specialist right away before you attempt to self-diagnose. There are many issues that cannot be simply solved through performance management alone and the problems vary from company-to-company.


An organizational illness can be quickly identified and remedies put into place effectively through a brief organizational needs assessment. That

### Let's Talk - Business... continued from page 8

ships for a group of engineers or scientists means they are working with people they respect on projects that have high impact. Quality relationships for the group of project managers mean they are working with people who are like extended family who they enjoy socializing with after hours. You just have to ask to find out what it means to them.

Companies are often missing a significant opportunity to engage their workforce when they do not make the effort to uncover these motivators. Find out what is most valued. Find creative ways of reinforcing or further developing the delivery of these key motivators. Putting "energy" into your organization and increasing the

engagement level of employees is not an HR program; it is the essence of what leadership is about. Perhaps now is the time to step back, take some time to uncover what are those "must have" motivators are for your employees. Make it a priority to set up the right conditions to deliver on them and the ROI will become an important leverage point for your business.

 Jim Wiggett is Founder and President of Jackson Hole Group, providing strategic human capital management consulting support to Boards, CEOs and senior executives.

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### Let's Talk - Advocacy.. continued from page 10

economic impact analysis will be conducted, prior to deliberations and vote, on the impact of the relevant proposal on the region's economy. We believe these analyses will spotlight the commitment and efforts of local government to spur economic vitality.

Complimenting EG's enhanced collaboration and legislative presence is a distinct editorial turn to articulate and communicate an employers' point of view. Certainly, it's important to report on legislative and judicial actions that impact employers. Equally important, and

some may say more so, is what is EG's position on a particular piece of legislation? What does EG stand for?

We believe the Great Communicator captured the essence of taking a stand:

"Are you willing to spend time studying the issues, making yourself aware, and then conveying that information to family and friends?....If some among you fear taking a stand because you are afraid of reprisals from customers, clients, or even government, recognize that you are just feeding the crocodile hoping he'll eat you last."

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### Performance Management... continued from page 28

assessment may include executive discussions, focus groups and employee surveys – all of which are very cost-effective and can provide significant results to increase performance, productivity and profitability. A training specialist can further identify the most budget-friendly solutions given your price-point, availability and timeframe.

Employers Group Boot Camp Series:  
Four prescriptions that will help your organization, management, supervisors and employees!

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First Time and Frontline Supervisors Boot Camp  
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**The Employers Group Helpline receives thousands of calls each month. Here are some recent hot issues:**

**Question:** Despite the rough economic times our company is facing, we are planning to give our employees a holiday gift this holiday season. We are considering a food gift (turkey or ham), cash, or a gift certificate. What are the taxable income issues of each option?

**Answer:** Holiday Gifts – If the employer gives a turkey, ham, or other item of nominal value during the holidays, that item is not taxable. If the employer gives its employees cash, a gift-certificate, or a similar item that can be easily exchanged for cash, then these gifts are taxable regardless of the amount involved.

De Minimis (Minimal) Benefits – If the employer provides a product or service and the cost is so small that it would be unreasonable for the employer to account for it, then the value is not taxable. Generally, the value of benefits such as discounts at company cafeterias, cab fares home when working overtime, and company picnics are not taxable. 

**Question:** My company will observe Thanksgiving Day (Thursday) and the Friday after Thanksgiving as company holidays. Company policy states that in order to be paid for the holidays, the employee must work both business days before, and the business day after the holiday. Employees who are on vacation are exempt from this rule. Can we use this rule as a condition for holiday pay?

**Answer:** The “fixed salary” rule under both federal and state law requires that: If an exempt employee works any part of the week, then they must be paid for days when the company closes during that week including holidays. Most common misunderstandings about holidays:

1. Federal and state legal holidays, generally, only require that government agencies and financial institutions remain closed. A private employer could stay open 365 days a year.
2. Employers don't have to pay a legally required premium for working on a holiday. However, most companies do voluntarily pay a premium for working on the holiday. Some companies just pay straight time, but allow the employee to take another day off.
3. If you pay a premium for working on a holiday, explain it this way to employees: “For the holiday, you will be paid straight time for actual time worked, plus we will pay you an additional day's pay as holiday pay.” Don't say, “We will pay for double time for the holiday.” Why? Frequently, the employee thinks they will get double time for working the holiday plus either holiday pay, or an additional day off.
4. Unused, unassigned, floating holidays must be paid off with any unused vacation at termination.
5. Most companies do not pay employees on leave holiday pay, but if the employee is on vacation while a company holiday occurs, the employee is not charged vacation for that day.
6. Hours paid, but not worked, on instances such as holidays, vacation, or sick days, do not have to count as hours worked for overtime purposes.
7. Sometimes, for employees to get the day after Thanksgiving off, they agree to work longer than 8 hours a day before the holiday, or make up the time in the next week. Employers must be aware that such a “trade-off” can result in overtime pay. Overtime possibly can be avoided through the use of California's “make-up time” rule. It has to be at the employee's voluntary request and the company should be open for work on Friday, if they want to work. Ask the Employers Group Consulting Helpline how to do this 