Special Report

A supplement to BLR publications

Top 10 Best Practices in HR Management For 2008

Prepared for the *HR Daily Advisor*

BLR®

www.hrdailyadvisor.com

30612160

SPECIAL REPORT
A supplement to BLR publications

Top 10 Best Practices in HR Management For 2008

BLR®
BUSINESS & LEGAL REPORTS
141 Mill Rock Road East
Old Saybrook, CT 06475
www.blr.com

30610800

Executive Publisher: Robert L. Brady, J.D.

Editor in Chief: Margaret A. Carter-Ward

Managing Editor: Catherine L. Moreton, J.D.

Legal Editor: Susan E. Prince, J.D.

Editor: Elaine V. Quayle

Production Supervisor: Isabelle B. Smith

Graphic Design: Catherine A. Downie

Layout and Production: Susan Dumas

ISBN 1-55645-317-5

Printed in the United States of America

Questions or comments about this publication? Contact:

Business & Legal Reports, Inc.
141 Mill Rock Road East
P.O. Box 6001
Old Saybrook, CT 06475-6001
860-510-0100
860-510-7224 (fax)

http://www.blr.com

Table of Contents

Introduction

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

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

This special report will discuss the top 10 best practices in HR management for 2008—in other words, how HR managers can anticipate and address some of the most challenging HR issues this year. This report will give you the information you need to know about these current HR challenges and how to most effectively manage them in your workplace.

#1—Keeping Healthcare Costs Down

According to a recent survey by Watson Wyatt Worldwide and the National Business Group on Health, employers expect healthcare benefit costs to increase approximately 8 percent in 2008. Knowing that healthcare costs will not decrease in coming years, the challenge then becomes how to keep the increases to manageable levels.

Cutting Program Costs

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

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

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

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

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

Consumer-driven health care. In order to curb rising healthcare costs, more employers are implementing consumer-driven healthcare plans (CDHPs). In fact, according to the Watson Wyatt and the National Business Group on Health survey, there's been a rise from a year ago in the number of employers utilizing CDHPs. The survey of large- and medium-sized U.S. employers found that 29 percent are now offering a high-deductible health plan with either an HAS or health reimbursement account.

According to Watson Wyatt, the "best-performing companies have a 2-year median cost increase of 2.5 percent, compared with 11 percent for their poor-performing counterparts … and are more likely to implement programs that go beyond employee cost sharing and involve the appropriate use of financial incentives, effective information delivery, quality of care, employee health and productivity, and data and metrics. CDHPs continue to gain popularity."

The survey found that 38 percent of employers now offer CDHPs, and 25 percent offer a health savings account (HSA). Despite the increased use of these types of programs, the median employee enrollment rate in CDHPs is still only 8 percent. This leaves a lot of room for reducing healthcare costs!

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

Wellness Programs

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

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

Studies of the wellness plans of 200 companies completed by the *American Journal of Health Promotion* conclude that the return on investment (ROI) for employee wellness programs can be as high as 348 percent in 3 to 6 years. This figure certainly suggests taking a closer look at instituting a wellness program if you don't already have one in place at your company.

And if you do, review your wellness plan and program to make certain that your ROI is as high as it can be, says Heather R. Hunt, editor of *Workplace Wellness: Healthy Employees, Healthy Families, Healthy ROI,* a comprehensive workplace wellness guidebook published by BLR, Inc.

When wellness programs are not successful, it's often because there's a lack of senior management support and/or the original planning wasn't as comprehensive as it should have been, Hunt explains. Senior leadership must communicate the importance of the wellness initiative to employees up front. They should also participate in the program once it is up and running to set an example for other staff.

To begin planning, says Hunt, "You should start out by assessing your employee needs." She provides an example of a company that runs an excellent breast health program—for an employee population that is 80 percent male. The ROI on that particular program would be low because only a small percentage of the employees can take advantage of it.

Assessing employee needs can be done through employee surveys, focus groups, and analysis of employee demographics. For example, if you have a very young employee population, or an older population, or the majority of the workforce is female, their needs might be quite different from another employer such as the one noted. If you have many smokers, you might institute a stop smoking plan, suggests Hunt.

Once you have determined the health needs of staff, you should develop a comprehensive operating plan that includes a mission statement for your wellness programming, says Hunt. The plan should incorporate the **SMART** method; it should include **S**pecific, **M**easurable, **A**chievable, **R**elevant, and **T**imed objectives and action steps, she explains.

Even if a company doesn't have enough internal resources to staff and run a comprehensive program, it can often partner with outside vendors or community organizations to achieve the employee wellness goals and objectives that have been set. Often an employee health insurance carrier offers some programming and local branches of the American Cancer Society and American Heart Association, for example, offer community preventive programs that an employer can also access.

Beware of Legal Landmines

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

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

However, wellness programs must be carefully crafted. For example, a wellness program that offers financial incentives to employees who walk a certain number of miles per week may discriminate against employees whose disabilities preclude them from reaching the target number.

When developing a program, therefore, employers must be aware of the legal requirements that may impact their decisions. Offering a reasonable alternative that allows a disabled worker to earn the financial incentive may satisfy certain legal requirements, but crafting such alternatives may be challenging. Employers should have their legal counsel review a wellness program before it's presented to employees.

Best Practice: Nontraditional Wellness Program Goes Beyond Basics

The Field Museum in Chicago, Illinois, a nonprofit organization with 650 employees, has created a comprehensive and diverse employee wellness program to achieve a healthier, happier workforce. "About 9 years ago, we started a wellness program with the basics—articles in our employee newsletter, an aerobics class once a week, and participation in walks and runs as a team," explains the Museum's Vice President for HR and Administration Shawn VanDerziel. The Museum (www.fieldmuseum.org) also offered discounts at local fitness centers and staged an annual employee health fair.

The Employee Health Fair, held every January during employee benefits' open enrollment period, offers traditional and not-so-traditional stations for staff to visit. In addition to offering blood pressure and cholesterol checks and eye screenings, employees can also visit with the Museum's health insurers, a chiropractor, a massage therapist giving free massages, and acupuncturists.

Over the past few years, the Museum leadership has added a bicycle rack inside the building to encourage employees to ride bicycles to work and use the many bike paths surrounding the Museum in its location on the Chicago lakefront. Employee shower facilities have been added in several locations.

During the past year or so, Diane White, vice president of operations, partnered with HR to offer two sessions of "The Biggest Loser" (a take-off on the television show that rewards teams/individuals for losing weight) to her staff, many of whom are front-line employees such as ticket takers, security, and housekeepers. With prizes such as mountain bikes and hotel stays donated by vendors, 45 employees participated over the two sessions and lost a total of approximately 135 pounds.

The Museum's leadership has instituted other new initiatives, such as providing fresh fruit to staff each Monday morning, filling some vending machines throughout the building with healthy alternatives, adding an on-site employee fitness center, offering two yoga classes, a Pilates class, and a cardio (kickboxing) class in the on-site fitness center, and adding more wellness educational programs.

The Museum has been able to keep employee health insurance premium increases below national and local averages for employers.

Disease Management

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

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

1. **Determine if your provider has a disease management program in place.** If not, you should reconsider your relationship with them. If they do, ask about their results, how they are reaching out to the members, and what they do to make the programs work.
2. **Consider the communication process.** Provide employees' internal email addresses to your administrator for communication of health insurance information. Have your administrator communicate to employees about disease management opportunities. For most employers, that's a stretch—you're not sure you want them communicating directly with your employees. But as email becomes standard for communications, this is one thing that could really help employers make a difference. This is a major—and very important—change in perspective for employers that want to approve all communications to their employees.
3. **Encourage participation through incentives.** Employers can create incentives for the employees, their spouses, and their children to take health risk assessments with their carriers. For example, offer employees a $50 gift certificate for completing the health risk assessment, a series of questions, usually taken online. The assessment can be a very valuable tool in predictive modeling to find those people who need help.

#2—Multigenerational Workforce

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

As your "Radio Babies" (approximate ages 62 to 77) and Baby Boomers (roughly ages 43 to 61) retire or begin to phase out, Generation X (ages 30 to 42, give or take) simply can't fill all the workforce gaps: That group is too small. So, despite problems your older staffers may think they've had in adjusting to Gen X, you'd better get ready to begin hiring Gen Xers. They're the biggest cohort since the Boomers, and you're going to need them. But how do you cope?

In order to increase the amount of workplace interaction among employees of different ages, consider taking some of the following action steps:

- Establish a series of mentor relationships that pair older workers with younger ones, and encourage pairs to meet at least monthly for a year or more to work on career goals set by the younger workers.
- Create focus groups of mixed generations to brainstorm ideas about achieving company objectives.

- In populating ongoing project teams, strive for age diversity, as well as diversity of levels, race, and gender, in addition to appropriate functional and departmental representation.
- Make it easy for older workers to obtain either in-house or external training in new technologies or methodologies. Pair older workers with younger workers who may have more experience with new technologies.

Understanding Gen Ys

Phil Gardner, Ph.D., probably knows more about these young people than most, since he heads Michigan State University's Collegiate Employment Research Institute. Based on the Institute's extensive studies of people transitioning from undergraduate school to the workforce, Gardner discussed what they like—and don't like—on a recent Webinar conducted by recruiting firm Monster.

Gardner estimates that some 10 million from Generation Y will join U.S. companies in the next 5 years, so we'd better get used to them and be ready to ease their paths into our organizations—if ease is possible.

Gardner defines the Ys as those born after 1979, and he stresses that "they think they're special, because they've been told they are." Although Gen X seemed quite different from the Boomers, Gen Y is even more emphatically different. Gardner says they generally have an entrenched sense of entitlement, bolstered by access to tremendous financial resources (through their parents) and by having been raised in a very sheltered manner.

Gardner goes so far as to say that Gen Ys can be narcissistic and describes some of the effects of the way they grew up. One outcome of their backgrounds that Gardner and others find frustrating is that Ys lack the social skills indoctrinated in the older generations. They've spent most of their time with their families and their peers, interacting very seldom with other adults. That lack of experience is worsened by the hours they spend connected to an iPod, cell phone, or BlackBerry®.

Gen Ys sport some contradictory traits. Gardner says they're the best-educated generation the United States has ever produced (although generally unenthusiastic about math and science). They've been pushed hard, so they are both pressured and achievement-oriented. On the one hand, they are very confident. On the other hand, they have a fear of failure. They're very passive, needing detailed instruction about how to do their jobs. And, they demand attention and personal accommodations.

Gardner has studied these young people and has found, with slight differences between the sexes, here's what they most want from employers: (1) interesting work; (2) chance for promotion, which is a shade more important to men than women; (3) good benefits; (4) job security; and (5) the chance to learn new skills. Notice that salary, which is among the top 10 on the wish list, isn't in the top five.

Gardner says it's ironic that Ys mention job security at all, when they are very likely to job surf continually until they are 27 or 28. Fewer than one-third of employees in this age group say they will not surf. And, 44 percent would accept a job offer and then reject it if a better one came along.

What kinds of employers do Ys look at? Brand names. And they want to work for organizations that are known as "cool" (think Google and Yahoo). So small- and medium-sized companies that lack national reputations are often off their radar.

Next, they want cool co-workers, preferably in their own age cohort; the chance to gather in "tribes" is very important to Ys. They'll organize their own evening trips to wine bars, but employers can help by supporting volleyball or bocce teams. On the job, they're looking for variety (consider job rotations to offer/provide different experiences and new skills). They also want employers to invest in their success through courses and certifications.

Gardner notes that the desire for interesting work has topped young people's lists since 1972, but how they define it has changed. Now it means, in addition to variety, cool work toys and flexible schedules. In fact, work-life balance is more crucial to this generation than to any other.

Best Practice: Teleworking Is Good for Businesses and Employees

The term may vary a bit depending on who is discussing this phenomenon, but telecommuting or teleworking continues to expand. According to a statement released by WorldatWork after a fall 2006 Telework Conference presented by that organization and the International Telework Association and Council (ITAC), telework has graduated from a business strategy to a business necessity. Telecommuting allows many companies to stem the rising costs of locating and equipping offices for employees while often improving productivity at the same time.

Three major trends were identified and discussed at the conference that contribute to the expansion of telework:

1. Distributed work is a reality with 68.5 percent of the American population using the Internet. Many employees are already mobile or working at home.
2. The shortage of talent continues to grow. By 2014, there will be a shortage of 8 million workers, covering all employment categories, as demand for skilled talent outweighs the supply of skilled workers.
3. Many workers are dual-focused on both work and family so that a premium is placed on time and flexibility over money.

ITAC estimates that the current number of teleworkers in the United States is 26.3 million, or approximately one-fifth of the workforce. In 1995, there were 4 million teleworkers. ITAC estimates that by 2010, 100 million U.S. workers will be telecommuting.

Some of the benefits of teleworking highlighted by employers attending the Telework Conference are:

- **Relocation cost savings.** Relocation of employees to other regions sometimes costs as much as $100,000.
- **Increased productivity.** Reduced employee absenteeism increases productivity.
- **Reduced costs for office space.** Office space is estimated at a cost of $10,000 per year per worker.
- **Employee satisfaction.** Satisfaction among teleworkers and their managers is up to 25 percent higher than other staff.

"Telework is not just about providing an improved work-life balance for the employee," said Anne Ruddy, president of WorldatWork. "It is also about improved business performance for the employer."

Making Gen Xers Happy

According to Deanne DeMarco, an author, speaker, and corporate trainer, there are four strategies that will enable you to attract the Gen X talent that your company will need to stay successful and competitive in the years to come.

1. **Focus on collaborative relationships.** Gen Xers grew up in social conditions very different from those of previous generations. Many were latchkey children, and 50 percent were raised in single-parent homes. They often spent an excessive amount of time alone. As a result, Gen Xers have become relationship builders. In fact, this need for strong relationships touches every aspect of their life at home, at work, and as consumers.

   As such, companies need to develop new communication models that include strategies for building "it" together. So rather than tell your Gen X employees what steps to take to solve a problem, allow them to brainstorm with you to generate ideas. Or, when you need to decide on a course of action, get their feedback on which option to pursue. Really listen to what they offer and act on their input. Be open to what they say; often their suggestions will amaze you.

2. **Offer variety.** Gen Xers are interested in equality, flexibility, and a lattice corporate structure. Gen Xers are not impressed with status symbols such as titles; rather, they want an uncensored corporate structure coupled with opportunities to learn new skills. When given the choice, they prefer flex hours and the ability to telecommute over a higher salary. Offer them opportunities to learn new skills, to job share, and to assist in projects in other departments. Gen Xers yearn for increased intellectual stimulation. Additionally, since Gen Xers were raised in the Information Age, they expect to have the latest technology tools to do their jobs.

3. **Work in teams.** Teaming and the ability to bond with others is core to the Gen X work ethic. For example, when it comes to leading Gen X workers, managers need to do more than just manage; they need to work alongside the employees doing the daily activities. Also, assign teams within the department to complete projects. For each new task or project, rotate the team leader so that everyone has the opportunity to develop his or her leadership skills. Additionally, have people work in "dyads," where one team member helps another on a project to build internal working relationships.

4. **Build a strong corporate communication process.** In most companies there's no open debate, and employees are always watching their backs. They know that if they say something out of turn, they're likely to get projects they don't want, or they'll get dinged on their performance review. To keep Gen Xers on staff, you need to encourage debate and opposite opinion. Get people to open up, discuss problems, and express opinions. Then, put in the processes so the ideas and opinions get acted on. Equally important is creation of an environment of instant feedback. Rather than force people to wait for feedback for days, weeks, or until the yearly performance review, communicate regularly. Give updates on ideas that were generated, projects that were worked on, and anything else that impacts the company or employee.

Best Practice: Work-Life Balance

When Susan M. Corcoran was hired by Jackson Lewis 17 years ago, she knew from the start that she was joining a law firm that embraced work-life balance. That's because several of her mentors, who were mostly men, telecommuted on a regular basis. "They were telecommuting long before I was telecommuting," she says.

When Corcoran went on leave to have her two children, she did not take the full amount of leave all at once either time. Instead, she worked out an arrangement in which she returned on a part-time basis and, as a result, waited longer before going back on a full-time basis. Combining accumulated vacation time with the firm's supplemental pay program, Corcoran was able to take medical leave without interruption of her pay.

Adopting family-friendly policies and programs is a good first step toward helping employees achieve work-life balance, but it's also important to create a culture in which employees feel comfortable using those benefits without fear that their careers will suffer as a result, she says.

Another work-life benefit offered by Jackson Lewis is the opportunity to work part-time. Attorneys who choose a part-time schedule are not penalized for doing so. In fact, early in 2006, the firm introduced a policy aimed at helping ensure that they stay on track for becoming partners. Since length of service is a criterion for partnership consideration, the new policy makes sure that part-time attorneys are credited for their part-time service, according to Corcoran. Within the past year, one of the firm's part-time attorneys became a partner, she says.

Jackson Lewis's commitment to creating a family-friendly environment and helping its employees achieve work-life balance is further demonstrated by recognition throughout its policies that "family" includes domestic partners and spouses; leave policies that meet or exceed federal, state, and local laws; and a diversity committee, which has implemented a variety of programs, such as attorney mentoring, training, and education about opportunities available within the firm.

Here are a few suggestions to enhance work-life balance for your employees:

Identify needs. Survey employees to find out what type of flexible arrangements or family-friendly benefits would be most helpful to them.

Remove barriers. "In determining the right mix of policies for your organization, you want to ensure there are no 'barriers' to anyone's success within the organization should they need to take additional time off to care for a family member, or request flex time and are permitted to do so," says Corcoran. "The easy part is developing the policies; the more difficult part is the follow-up and ensuring employees are not penalized for participating in the employer's work-life balance policies and programs."

Effectively manage flexible arrangements. "You have to take each situation on its own. There are certain individuals who work well with little supervision and others that need more mentoring," she says. In addition, "not every job is amenable to telecommuting, and not every workweek is amenable to telecommuting."

The Aging Workforce

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

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

- They need more money to sustain them because they are living longer.
- They need work-provided benefits, especially in light of pressure on pensions and Social Security.
- They seek the stimulation and sense of productivity that come from meaningful work.
- They enjoy feeling valued for their experience and knowledge.

Korn/Ferry International, a provider of talent management solutions, reports that "re-careering" is popular with the Baby Boomer generation. "Re-careering" is defined as changing professions mid-to-late in a career. According to Korn/Ferry, 58 percent of the 270 international recruiters participating in the survey reported seeing a rise in the number of executives who are changing their professions when facing retirement in the not-too-distant future. The recruiters further reported that ample opportunities exist for Baby Boomers to change careers.

According to Joe Griesedieck, vice chairman of Korn/Ferry International, "Re-careering executives are finding and seizing the opportunity to change course, be it through entrepreneurship, consulting, volunteering, or some combination of pursuits. While this won't cure the impending talent crunch, it will provide more opportunity for younger executives to learn from Baby Boomers before they retire completely."

Retirement Preparation Issues

Savings. Recently, there has been a decrease in the number of workers who say they or their spouses have tried to calculate how much they will need to save for retirement. The "Retirement Confidence Survey®" published by the Employee Benefits Research Institute reports that this figure, which increased to a high of 53 percent in 2000, dropped to 33 percent in 2002, and leveled off at 42 percent in 2004 and 2005. Despite this, a majority of workers believe they are behind schedule when it comes to planning and saving for retirement. Most of those behind schedule say that high expenses, particularly everyday expenses, child-rearing expenses, and medical costs, are a major factor in keeping them from saving.

The decline in defined benefit pension plans and the replacement by defined contribution plans makes preretirement planning more important than ever. While all financial planners advise individuals to invest more and more conservatively as they near retirement, this message often does not get through. Many workers have had to put off retirement because they were still investing primarily in stocks during 2001 and 2002 even as they were 1 or 2 years away from their planned retirement.

As would be expected, surveys indicate that larger firms (500 or more employees) are more likely than smaller ones to have preretirement planning programs and, of those, more healthcare/educational organizations have formal programs compared to finance/services, manufacturing, and research and development. Most organizations with formal preretirement planning programs invite employees to participate at age 55; however, some start at the age of 50 and others at 60. Some let employees of any age attend the program.

"Phased retirement." Facilitate "phased retirement" for older workers who want this option. Encourage part-time work, job sharing, consulting arrangements—anything that will allow veteran employees to cut back some while still contributing their knowledge and energy to their colleagues and their company.

Tailored benefits. Design benefits to include options that may be attractive to older workers. For example, offer new hires ages 45 and up with lots of work experience more than the usual 1 week of vacation. Consider 1-month paid sabbaticals for employees with more than 5 or 6 years' service.

Best Practice: Seasoned Professionals Make Superb Employees

A little gray hair and a look of wisdom in job applicants' eyes may predict some of your best candidates for job openings. When you hire older workers, you find a higher tolerance level for company politics, problems, and more staying power, says Jean Erickson Walker, Ed.D., CMF, a professional effectiveness coach, executive vice president of OI Partners, author and recent speaker for Execunet's "Find the Job You Want When You're over 50" Webinar. Older staffers are more likely to remain with a company for a longer time than younger staff, and generally work hard to promote the welfare of the company, she comments.

These are just a few of the reasons that HR professionals should take a closer look at employment candidates who are in their mid-40s and up. Walker comments that, "Typically, hiring professionals are concerned and reluctant to hire people that they consider to be overqualified. I say respect competence and talent. Hire the best you can, and consider it a gift to your company instead of thinking that someone is overqualified and may leave."

Many older professionals are seeking the opportunity to provide value to organizations and are no longer focusing on the fastest path to the top of the organization. Many of them have already reached their professional goals and are most interested in continuing to be stimulated by their work and learning new technologies and skills.

#3—Hiring

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

Match your strategy to your company. Before deciding what approach to hiring will work best for you, consider who you are as a company. For example, what is your overall approach to company growth? Are you looking to expand or merely to fill existing positions as they become vacant? Are you a rapidly growing company that can offer frequent advancement opportunities as operations expand? Such companies often benefit from hiring strategies that focus on finding employees at the entry level with potential and willingness to learn the business and develop necessary skills and then training and promoting from within. Such a strategy allows the company to hire employees at the entry level, where costs are lowest, and develop and tailor their skills to company needs over time. On the other hand, a company that grows slowly and therefore cannot offer as many advancement opportunities is better served by a strategy that relies more heavily on outside talent at all levels.

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

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

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

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

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

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

Video Résumés

We have all received them—"innovative" applications and résumés from candidates hoping to grab your attention, get an interview, and even a job, based on the candidate's "distinctive" style. Cover letters with personal stories, pictures, and even enclosed widgets representing an applicant's work experience have been turning up on HR professionals' desks for years.

One of the newest innovations in applicant tools is video résumés. These are mini-movies showing a hopeful candidate promoting him or herself for employment.

While video résumés show innovation, technical know-how, and sometimes, polish and professionalism, they also present legal and practical issues of discrimination and exclusion. If an applicant for a position is a minority, and doesn't receive the job, he may be able to claim he did not get the job because of his minority status.

To avoid facing a claim of discrimination, as a part of your overall hiring strategy, you may want to take a look at each of your company's job classifications and determine what makes a person a good candidate for that job. Go beyond essential job functions and consider the background and inherent characteristics that are most likely to equip a person to perform the job.

You may wish to look at existing and past employees who have performed best in the job at issue, and determine what was responsible for their success as part of coming up with your own detailed profile of the ideal candidate. Be very careful, however, to be sure that your profile and your notes on candidates whose video résumés you have reviewed do not include, either directly or indirectly, any characteristics that might be viewed as discriminatory.

Internet Search Engines

One in four hiring managers reports that they have used Internet search engines to research prospective job candidates, according to CareerBuilder.com. This statistic is one of several findings from a survey of 1,150 hiring managers in the United States by CareerBuilder.com in September 2006. What the hiring managers found during their research led 51 percent of them to decide not to hire a job candidate!

Hiring managers also used social networking websites to learn more about candidates, and the majority (63 percent) did not hire a person based on what was uncovered about an individual.

These findings should cause concern for individuals seeking jobs. However, for employment recruiters and hiring managers who are not currently using the Internet to find out more about prospective employees, they may be missing a free source of information. Just "Googling" (searching through www.google.com) a candidate's name may lead to information they may find of great interest.

However, be careful to note the source of the information before you use it to draw any conclusions. A malicious person could post negative information about someone else just because he or she does not like the individual or is angry because the individual received a project, promotion, or position that the other person wanted.

Some of the negative findings that hiring managers discovered when researching information about job candidates on the Web included: possible lies about qualifications, poor communication skills, links to previous criminal behavior, bad-mouthing their previous company or fellow employees, posted information about drinking or using drugs, shared confidential information from previous employers, or inappropriate photographs.

On the other hand, researching candidates on the Web may also serve to confirm your positive impressions of a candidate from a job interview. For example, 64 percent of the hiring managers surveyed could relate an instance when a candidate's background information found on the Internet supported their professional qualifications for the job. Other positive findings included evidence that candidates were well-rounded and showed a wide range of interests, demonstrated good communication skills, a professional image, positive posted references, and receipt of awards and accolades.

Best Practice: Proactive Recruiting

E. Jill Pollock, associate vice president and chief HR officer at Texas A&M University (TAMU), is responsible for "Employee Services," a merger of the HR and Payroll departments. She explains that TAMU has undertaken significant changes in the HR function to ensure diversity and equal opportunity for all job applicants and employees and to provide the best possible employee services for the university. The changes were implemented in 2006 after a self-review of all HR processes was completed in 2005 with participation from other functions outside the department.

She comments that TAMU has taken a more active role in recruitment by interacting with Hispanic and African-American communities, as well as keeping a presence in local towns and neighborhoods, to ensure that they have a diverse pool of employment candidates when job openings occur. "While we're recruiting students, we're in the community talking to parents as well, developing a relationship and saying we're a welcoming organization with excellent job opportunities."

Here are some identified areas where changes have been implemented or are in the process of being implemented at TAMU:

Relationships with Employee Services liaisons were strengthened. Pollock says learning opportunities were provided to make certain that the liaisons (employees holding this position handle HR at the local level in colleges and departments) have the necessary training to support the needs of staff and faculty.

Compensation administration was reviewed. Pollock says that the need for a compensation philosophy across the organization was uncovered. "The philosophy is pretty decentralized, but we pay at about 95 percent of the market for positions within our hiring radius." HR and the HR Compliance Committee analyzed the compensation, compared it to best practices within higher education and in the private sector, and developed goals that exceed those best practices.

Position descriptions are in the process of being moved online. This was done so they can be used for job postings and linked to the performance evaluation system, notes Pollock. Every regular budgeted open job must be posted. In addition, hiring has been moved online, with both internal and external job applicants required to apply through the TAMU website in an effort to equalize the competition for jobs.

Written interview questions and manager training are in place. Just-in-time online training for hiring managers and requirements for written interview questions make the interviews and screening of prospective employees more consistent. "We provide recommended questions for specific job types. It's part of the hiring manager's toolkit or workbook that each manager receives through e-mail when beginning the hiring process," explains Pollock. The workbook also contains hiring procedures, screening tools, how to schedule interviews, and what managers should be looking for in job applicants.

Comprehensive background checks initiated. Background checks have also been put into place for all TAMU jobs now designated as security sensitive. Offers of employment are contingent on the outcome of the completed background check. This policy better protects students and employees, notes Pollock.

Best Practice: Job Applicant Screening

Recruiting quality job applicants for your open positions is always challenging, but the employment process can become very frustrating when new hires do not seem to fit in and don't stay with the company very long. A white paper, *The Recruiting Survey: As Worker Loyalty Fades, Personality Fit Is Critical for Hiring and Retention,* summarizes the surprising findings of the survey sponsored by eBullpen, LLC.

Forty-six percent of new hires leave their jobs within the first year, and only 49 percent remain after 2 years. Other surprising responses cited in the white paper include findings that 75 percent of respondents named quality of hire and retention as the two most important HR metrics, and 59 percent of those surveyed believe that less than half of all candidates interviewed are qualified.

More than half of the respondents noted that the personality of candidates is important in the hiring process. Assessing whether a job applicant will fit into your work culture and teams before you hire may make a difference in whether an employee will stay for only a year or 2 or become a long-term, dedicated addition to your workforce.

eBullpen, LLC, says, "Conservative industry estimates put the cost of turnover at 1.5 times that of salary, with some companies reporting a six-fold expenditure above salary when hidden costs such as 'chain reaction' turnover and lost productivity are factored in."

To help you hire better the first time, another white paper by Susan Govea of eBullpen provides hiring tips:

- **Assess the vacancy.** Involve the hiring manager, superiors, and subordinates with whom a person will work. Brainstorm about increasing productivity, satisfaction, and success for the next person who works in the position, as well as the required skills, most critical personal traits, and strengths that are currently missing from your work team.
- **Translate the information** collected into the skills and personality attributes that will enable a person to be successful in the position.
- **Be realistic about the skills and attributes you seek.** Does the job description sound like an unattainable super candidate who has to be everything—a strong leader and team player or an accommodating analyst who quickly makes difficult decisions? Recognize when traits conflict and determine which traits are most important.

- **Avoid rigid competency-based disqualifiers.** Using them at the cost of personal style will render a candidate list unbalanced, and an entire group of people who might better fit the personal style sought will be overlooked.
- **Interview at least three times and include at least three people.** Studies show that long-term placement increases with two, and even more with three, interviews. Prepare for the interview by developing targeted questions designed specifically to discover if the person has the personal traits and skills identified in the vacancy assessment.
- **Focus on the future,** rather than the past, with candidates. What a person might have done is not as relevant as what they need to do. Ask specific situational questions that are relevant to the job and types of tasks that must be completed.
- **Implement a follow-up success measurement.** Determine what made some hires so successful and try to replicate that experience with hiring tactics.

Succession Planning

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

Succession planning has taken on a whole new level of importance today as companies anticipate changes in the workforce. One of the most notable is the aging of the workforce and the significant "brain drain" many companies will experience as Baby Boomers begin to retire. According to the *Kiplinger Letter* of November 9, 2007, the worst shortages will be healthcare workers; mechanical, electrical, and computer engineers; physicists and chemists; accountants; pilots; database administrators and systems analysts; skilled manufacturing workers; and unskilled labor for farms, food plants, shipping depots, and restaurants.

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

To be of real value, the succession plan must include input from senior management, an analysis of the company's current and future needs for talent, a plan for identifying employees who will be trained and mentored to fill key roles in the future, and a plan for recruiting outside talent to make sure the company has the skills and experience it needs. Once this is done, the plan must be implemented, and managers and supervisors at all levels of the company must be evaluated on their work in developing employees.

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

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

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

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

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

Succession planning as a retention strategy. Succession planning that fosters in employees a sense that the company is committed to their development has benefits beyond simply making sure the company has the bench strength it needs to fill key positions. In a highly competitive labor market such as the one predicted over the next 10 years, a working succession plan can have a significant impact on staff retention. Employees who feel the company is making an investment in their development and career planning are more likely to be committed to the organization long term. It is important that these key employees understand the broader process so that they do not become frustrated because it appears that there is not a traditional line for advancement for their current position.

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

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

#4—Retention

Even confident employers that think they're tuned into what their employees are thinking may be in for a surprise. A recent Watson Wyatt and WorldAtWork survey of 262 large U.S. employers and a complementary survey of 1,100 workers reported some major differences in what employees feel is important to them as a reason that they would consider leaving their current positions and what their employers think.

The top six reasons in descending order for employees considering leaving their current jobs include: pay (71 percent), promotional opportunities (33 percent), work-life balance (26 percent), stress (24 percent), career development (23 percent), and healthcare benefits (22 percent).

The top six reasons in descending order that employers think employees might leave their current positions include: promotional opportunities (68 percent), career development (66 percent), pay (45 percent), relationships with supervisors (31 percent), work-life balance (25 percent), and company culture (10 percent).

Note: The numbers do not total 100 percent because each respondent provided three reasons to the surveyors.

An additional statement in the survey posed to both employers and employees regarded whether companies were treating their staff well. Eighty-six percent of employers agreed that they were, while only 55 percent of the employees agreed that their employers were treating them well. Fifty-four percent of the employers said that they will work harder to treat employees better over the next 3 to 5 years, while only 24 percent of the employees believe that their employers will treat them better.

If HR professionals do not know what their employees value most in their employment with an organization, they may find it difficult to recruit and retain high performing employees.

Competitive Benefits Crucial for Retention

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

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

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

Best Practice: Concern for Employee Community

Chosen as one of the state's "Best Companies to Work For" in 2006 and 2007 by *Washington CEO* magazine, Allyis, Inc., with headquarters in Bellevue, Washington, reports an annual employee turnover rate of approximately 5 percent. This rate is somewhat remarkable as Allyis (www.allyis.com) is part of the information technology (IT) industry that reports an average turnover rate of approximately 25 percent because of the high demand for IT professionals.

The company has grown significantly—it has doubled in size every year for the past 5 years—and currently has 100 employees. Allyis's founders have worked hard to create a sense of community within the company for staff and to become part of the local and global community surrounding the firm, says Mark Hewitt, director of HR. Allyis has responded to global disasters with financial and/or employee aid, for example, with staff members assisting in the relief efforts for Hurricane Katrina victims.

"Internally, we are also very aware that people have lives outside of work," notes Hewitt. "In a way of walking our talk, we developed the Employee Care Program and Employee Relations Program that work hand in hand, monitoring how people are doing in their jobs and in their lives." Employees may be rewarded individually through the Kudos Program, administered by the Employee Care Program, for doing an outstanding job or exceeding expectations on a project. Employees also receive gifts when celebrating an event in their personal lives such as buying a house, getting married, or having a baby, explains Hewitt. Events administered by the Employee Care Program include an annual picnic and holiday party, as well as bowling and casino nights for employees and clients.

Flexible scheduling and telecommuting, as well as working on location at other (client) companies, are common at Allyis.

To meet employees' development and benefits needs, Hewitt checks with them annually on a formal basis through an employee survey, but also talks with them on an ongoing basis to determine what is most important to them. "My approach to HR has always been listening very closely to employees, asking questions, surveying them."

The employee benefits program provides medical coverage for employees at no cost for the self-insured plan and dental, vision, and orthodontia coverage are offered as well. Before the employee benefits open enrollment period each year, Hewitt analyzes survey results to determine what should be changed in the current benefits structure to better meet staff needs, such as providing some childcare reimbursement for state-certified child care.

Best Practice: Encourage Employees to Take Their Vacations

A survey published by Expedia.com and a second survey jointly conducted by the Society for Human Resource Management (SHRM) and CareerJournal.com (CJ) reported some complementary findings: Many employees in the United States do not take extended vacations (a week or more), and some even lose unused vacation time each year.

The SHRM and CJ survey results indicate that 70 percent of employees are taking long weekends to use their accrued vacation time. The Expedia survey found that only 40 percent of the individuals surveyed took weeklong or longer vacations. Employed adults in this country also neglect to take an average of 4 days of earned vacation each year, according to the Expedia survey. Expedia calculates this figure to equal more than 574 million vacation days not being taken by U.S. workers!

The SHRM and CJ survey findings report that one-third of employees take work on vacation. According to the SHRM and CJ survey report, "Technology has made it much easier for employees to stay connected to the workplace. Global competition and advances in technology have led to changes in employees' obligations to keep in touch with the office."

Some employers may think that these statistics exhibit a strong degree of employee dedication to the organization, but the reality may be that employees are not relaxing enough and may exhibit symptoms of job burnout without enough downtime.

The SHRM and CJ survey report suggests that HR professionals should make certain that employees use their scheduled time-off without work responsibilities interfering. "Without breaks from the workplace, it is likely that employees are not performing at their optimum level. Lack of time away from the workplace can lead to stress, anxiety, emotional problems, and physical ailments. This, in the long run, will impact an organization's productivity, healthcare costs, turnover, and overall bottom line."

#5—Immigration

In 2007, the U.S. Department of Homeland Security's (DHS's) U.S. Immigration and Customs Enforcement (ICE) reported that arrests in worksite enforcement investigations have increased significantly in the last few years. According to ICE, it arrested 863 individuals on criminal charges (both employers and employees) in worksite enforcement investigations during fiscal year 2007, up from 176 in fiscal year 2005. The agency also arrested 4,077 individuals on administrative charges last year.

For 2008, the immigration enforcement efforts by ICE will continue to intensify as the DHS rolls out its enforcement strategy to expand existing efforts to target employers of undocumented workers and immigration violators inside the country.

No-Match Letters

In 2007, the federal government published a final rule describing an employer's obligations and its options for avoiding liability after receiving a no-match letter from the DHS and the Social Security Administration (SSA).

The DHS sends a no-match letter to an employer when the immigration-status or employment-authorization documentation presented or referenced by the employee is inconsistent with the agency's records. The SSA sends a no-match letter when the combination of name and Social Security number submitted for an employee fails to match. The new regulation clarified that employers may be held liable if they fail to take "reasonable steps" within 90 days of receiving the no-match letter.

As of the publication of this report, a federal judge has delayed the implementation of the rule. The federal government has agreed to revisit the issue, taking into consideration the concerns of the federal court.

Electronic Verification

The government is discussing mandating electronic verification of the I-9 form, the form used to verify citizenship and right-to-work in the United States. Currently, employees fill out the form, show documentation that proves identity, and are then eligible to work.

The new system, dubbed the SAVE program (Systematic Alien Verification for Entitlements), debuted 2 years ago, is electronic, and allows instant confirmation. The SAVE program provides customer access to information contained in the Verification Information System (VIS) database. This database is a nationally accessible database of selected immigration status information on over 60 million records.

The SAVE program enables federal, state, and local government agencies and licensing bureaus to obtain immigration status information they need in order to determine a noncitizen applicant's eligibility for many public benefits. The program also administers employment verification pilot programs that enable employers to quickly and easily verify the work authorization of their newly hired employees.

The cost of access to the VIS Customer Processing System (VIS-CPS) varies by access method. There are currently five access methods available: Web-Based (Web-1, Web-2, and Web-3); Computer Matching (SFTP Priority Batch); and Web Services. The transaction cost varies from $.20 to $.26 per query for an initial verification and from $.24 to $.48 for an additional verification.

For agencies using VIS-CPS, the response time for an initial verification is 3 to 5 seconds, and an additional verification request, in most cases, is within 3 to 5 federal government workdays. For agencies using the manual verification method (Form G-845), the response time for mandated agencies is within 10 federal government workdays from receipt by an Immigration Status Verification Unit and is negotiable with all other user agencies, usually within 20 working days.

Under the SAVE program, a noncitizen is never denied a benefit or license based solely on the response from an initial verification. An additional verification (automated or manual) procedure is in place as a precautionary measure.

I-9 Form: Tips and Tactics

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

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

I-9 Revision

Amendments to IRCA adopted in 1996 reduced the number of acceptable documents on List A of the I-9 form. On November 7, 2007, U.S. Citizenship and Immigrtion Services (USCIS) issued a revised Form I-9 to achieve full compliance with the document reduction requirements. The revised form, which employers must start using by December 26, 2007, may be obtained at http://www.uscis.gov/files/form/I-9.pdf.

Electronic Storage of I-9s

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

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

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

Making the Case for Electronic Storage

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

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

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

ICE Verification Program

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

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

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

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

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

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

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

#6—Safe Workplace

Preventing Staph Infections

If your employees are concerned about their families or themselves contracting MRSA (or MERSA, as it is sometimes called), they aren't alone. They are joining many concerned people who have heard about Community-Associated MRSA.

The official name of this infection is Community-Associated Methicillin-resistant *Staphylococcus Aureus* (CA-MRSA). MRSA is a type of staph infection that is resistant to some antibiotics, including methicillin, oxacillin, penicillin, and amoxicillin.

The type of MRSA infection causing new concern—and media attention—is acquired by people who haven't been hospitalized within the past year or had medical procedures such as dialysis, surgery, or catheters, according to the U.S. Department of Health and Human Services' Centers for Disease Control and Prevention (CDC) website (www.cdc.gov).

Staph or MRSA infections in the community usually show up as skin infections such as pimples and boils and occur in otherwise healthy people. MRSA is often spread by skin-to-skin contact or contact with shared items or surfaces that have come into contact with someone else's infection (e.g., towels, used bandages), according to the CDC.

If your employees are alarmed about the number of occurrences of CA-MRSA they are hearing about in the news, first reassure them that there are easy ways to prevent the spread of this staph infection. Second, remind your staff about proper handwashing procedures. Believe it or not, careful, regular handwashing is the best prevention.

Many healthcare providers use videos and demonstrations with staff on an annual basis as part of their infection-control training. You can do the same thing. It may sound a bit silly to teach adults how to properly wash their hands, but when people are in a rush, they may not be doing it carefully—and some may not be doing it at all!

A recent observational survey sponsored by the American Society for Microbiology (ASM) and The Soap and Detergent Association (SDA) showed that 77 percent of men and women washed their hands when in public restrooms. In a separate telephone survey of adults, 92 percent said that they wash their hands in public restrooms. When comparing men to women in actual hand washing, the observational survey results show that 88 percent of women washed their hands, while only 66 percent of men did.

SDA Vice President of Communications Brian Sansoni comments: "There's no doubt about it—we need to do a better job of washing with soap and water. We need to be smarter about our health and take the 20 seconds to lather up. And if soap and water aren't available, reach for the hand sanitizer or the hand wipes." To read the entire Hand Hygiene Survey results, visit http://www.cleaning101.com/newsroom/09-17-07.cfm.

Unless directed by a healthcare provider, workers with MRSA infections should not be routinely excluded from going to work.

- Exclusion from work should be reserved for those with wound drainage (pus) that cannot be covered and contained with a clean, dry bandage and for those who cannot maintain good hygiene practices.
- Workers with active infections should be excluded from activities where skin-to-skin contact with the affected skin area is likely to occur until their infections are healed.

You can prevent spreading staph or MRSA skin infections to others by following these steps:

- **Cover your wound.** Keep wounds that are draining or have pus covered with clean, dry bandages. Follow your healthcare provider's instructions on proper care of the wound. Pus from infected wounds can contain staph and MRSA, so keeping the infection covered will help prevent the spread to others. Bandages or tape can be discarded with the regular trash.
- **Do not share personal items.** Avoid sharing personal items such as towels, washcloths, razors, clothing, or uniforms that may have had contact with the infected wound or bandage. Wash soiled sheets, towels, and clothes with water and laundry detergent. Drying clothes in a hot dryer, rather than air-drying, also helps kill bacteria in clothes.
- **Talk to your doctor.** Tell any healthcare providers who treat you that you have or had a staph or MRSA skin infection.

Pandemic Flu

According to the national CDC, an influenza (flu) pandemic is a worldwide outbreak of flu disease that occurs when a new type of influenza virus appears that people have not been exposed to before (or have not been exposed to in a long time). The pandemic virus can cause serious illness because people do not have immunity to the new virus.

Pandemics are different from seasonal outbreaks of influenza that we see every year. Seasonal influenza is caused by influenza virus types to which people have already been exposed. Its impact on society is less severe than a pandemic, and influenza vaccines (flu shots and nasal spray vaccine) are available to help prevent widespread illness from seasonal flu.

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

Leave Policies

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

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

Another example would be:

In the event of a pandemic (i.e., widespread outbreak of a communicable disease such as influenza), employees will be permitted additional paid medical leave if they are infected with the disease or if they have been exposed to the disease. Additional unpaid leave will be granted to employees who are unable to work due to the pandemic, but for reasons unrelated to their own illness (e.g., to care for family members who are ill, or to care for a dependent child whose school has closed temporarily due to the pandemic).

Family Care or Childcare Issues

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

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

Commuting Issues

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

Telecommuting

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

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

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

Consider Equipment Necessary for Telecommuters

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

15 Planning and Preparation Steps for a Pandemic

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

1. Someone within your organization should begin by identifying essential functions and individuals (including employees, suppliers, and contractors) that would be needed to maintain business operations during a pandemic.
2. Identify people who could take over these essential functions if necessary.
3. Consider alternative sources for supplies and other outside services in case your normal channels are unavailable.
4. Establish an emergency communications plan with key contacts, chain of communications, and processes for tracking and communicating employee status. Consider hotlines and dedicated websites for communicating information in a timely and efficient way to employees, customers, suppliers, and vendors, both inside and outside the workplace.
5. Gather up-to-date and reliable sources of information on the pandemic from public health and emergency management sources, and pay attention to their guidance. The CDC website is http://www.cdc.gov/flu/avian/index.htm. The federal government's avian flu site is http://pandemicflu.gov.
6. Plan for how to safely continue business operations or safely evacuate employees if essential services, such as power, water, and public transportation, are interrupted.
7. Forecast and allow for employee absences during a pandemic. They might need to be out because of their own illness, a family member's illness, quarantines, and school or business closures.
8. Establish policies to cover:
   - Employee compensation and sick leave absences—nonpunitive and liberal leave is recommended to encourage workers to stay home when ill.
   - When previously ill employees can return to work.
   - Telecommuting and flexible work hours.
   - How to respond when employees who have been exposed to the pandemic flu are suspected to be ill or become ill at work.
   - Restrictions on business travel to affected geographic areas.
9. Develop guidelines to help minimize the frequency of face-to-face contact among workers and between workers and customers. Consider seating in meetings, office layout, shared workstations, and hand-shaking practices.
10. Notify employees of ways to reduce the spread of germs, such as frequent hand washing and respiratory hygiene/cough etiquette.
11. Provide infection-control supplies at all worksites, including hand hygiene products, tissues, and wastebaskets.

12. Evaluate how you can assure that employees will have access to healthcare services if a pandemic occurs.
13. Supply employees with educational materials about the pandemic, including signs and symptoms of illness and how it's transmitted.
14. Have an employee assistance plan in place to address employee fears, anxieties, etc.
15. Educate employees about your pandemic preparedness plan.

State Gun Laws

Since there is no federal law regulating the possession of firearms on private property, employers must look to state and local laws for guidance. (***Note:*** The U.S. Supreme Court has agreed to hear a case concerning Washington, D.C.'s ban on handgun ownership in 2008. This may have a bearing on your state's laws once decided.) In most states, employers are generally free to prohibit guns (or other weapons) from their property, but many have never established specific policies and procedures to enforce a ban.

This has started to change as incidents of workplace violence have increased. Some employers who have established policies merely stipulate that weapons are not allowed in any workplace facility. Others have banned weapons from the entire premises, including parking lots.

Before writing any such policy, employers should investigate state and local laws. A majority of states have enacted legislation endorsing an individual's "right to carry" firearms. The specifics of those statutes vary from state to state and could even vary from city to city.

Some state right-to-carry laws contain very specific rules regarding who is permitted to ban handguns from their premises and what they must do to implement a ban.

Minnesota. For example, the Minnesota **Citizens' Personal Protection Act** stipulates that owners and users of private property (other than residences) are constrained as to the extent to which they can bar guns from the property:

- No one can bar individuals from possessing handguns in a parking area.
- A property owner cannot bar a tenant from permitting guns on leased premises.
- In order to prohibit guns on a given commercial property, an owner or tenant must follow a procedure that includes giving entrants "personal notice" and posting signs that comply with detailed specifications as to size, typeface, location, etc.

The law also offers employers ways to regulate the possession of guns by employees. They can establish policies that restrict carrying or possessing firearms while "acting in the course and scope of employment." However, employers' rights and obligations with respect to customers, vendors, independent contractors, or others who may come on to their property are more complex.

Oklahoma. Under the Oklahoma **Self-Defense Act,** business owners are allowed to ban weapons in their facilities and on their property. Employers in Oklahoma may also prohibit the transportation and storage of firearms inside locked vehicles parked on property owned or leased by the company under a permanent injunction issued by the U.S. District Court. The injunction prevents enforcement of a state law that barred such prohibitions. The October 2007 injunction stated that the law that prohibited employers from banning weapons in employee vehicles conflicted with the obligations and objectives of the federal **Occupational Safety and Health Act,** which requires employers to control hazards in the workplace that could lead to employee death or injury.

Domestic Violence

Thousands of workplace violence incidents each year involve current or former spouses, boyfriends, or girlfriends. And domestic violence can impact the workplace in less dramatic ways, such as through increased absenteeism and tardiness as well as reduced performance and productivity.

Some companies have preventive programs in place to deal with these problems. For example, Polaroid Corporation set up employee support groups and lunch seminars on domestic violence and has flexible personnel policies for employees who need time off to attend court or find housing. Liz Claiborne, Inc. established the "Women's Work" program (www.loveisnotabuse.com), which includes employee outreach, local awareness campaigns in targeted communities, and national outreach. And The Limited, Inc. provides employees with domestic violence resource information in the company's annually distributed associate handbook and has conducted training sessions for its human resources managers and executives.

Here are some suggestions for implementing your own domestic violence program:

- Educate employees about domestic violence and let them know about resources (such as hotlines and shelters) through lunchtime seminars, brochures, posters, and pay envelope stuffers. Ask workers to notify you about domestic violence problems so that you can boost security or offer other assistance.
- Train managers to recognize signs of domestic abuse, including unplanned leave, obvious anxiety, change in performance, unexplained bruises, or disruptive visits by a partner. Make managers aware of your policy of helping victims, and provide guidance on how to broach these sensitive issues with at-risk employees.
- Take precautions when you learn a dangerous situation might be developing. These could include limiting access to work areas, hiring security guards, installing security systems, changing locks and alarm codes, relocating the affected employee, and providing parking lot escorts.
- Consider getting a restraining order on behalf of an employee who either has suffered violence at work or has been threatened.
- Refer victims to your employee assistance program (EAP). If you don't have an EAP, you may want to keep a list of community resources that specialize in assisting domestic abuse victims.
- If an employee who has been the target of domestic violence has performance or other work problems, consider alternatives to termination, such as a flexible work schedule or a leave of absence. A victim who has a serious health condition arising from the violence might qualify for family leave.

#7—Corporate Social Responsibility (CSR) and Ethics

Corporate social responsibility and ethics are playing increasing roles of importance in companies today, and this trend will continue.

Corporate Social Responsibility

According to Jane E. Obbagy, a principal associate at Abt Associates in Cambridge, Massachusetts, corporations that face new and more challenging demands in the many roles they are expected to play can incorporate their social responsibility and environmental assurance functions into corporate operations through well-planned and focused activities.

Today, companies must continue to appropriately manage the environmental and social aspects of their profit-making activities while also being accountable to a wide range of stakeholders, including, but not limited to, governmental entities, employees, local communities, interest groups, and shareholders.

Obbagy states that given the magnitude of this challenge, universities, consulting firms, lending organizations, and global industry organizations are helping business step up to this opportunity by providing guidance to boards on what it means to be responsible, defining the terms of reference, giving advice on how to structure public-private partnerships, and demonstrating philanthropic social and environmental activities.

As these activities get under way, corporations around the world are operationalizing CSR or implementing a set of activities to enhance the environmental, social, and economic features of day-to-day practices in response to local and global stakeholder requests.

Corporate social responsibility is having a profound impact on business strategy, operations, and culture. PR News' CSR Awards recognize the corporations and their partners that have developed successful CSR campaigns. The 2007 winners included Nike, Inc., Telus Corporation, CVS Pharmacy, and Cone, The Cartoon Network, and Zeno Group, Fleishman Hillard, and Ernst & Young, Prevea Health Care, UNICCO, International Organization for Migration, and Newlink Communications, PricewaterhouseCoopers, LLC., Timberland and Porter Novelli, and Avnet, Inc.

Best Practice: Going Green

Since January 2007 when DLA Piper, an international law firm with 23 U.S. offices, undertook an organizationwide Global Sustainability Initiative (GSI), 30 of the employees have received help in securing hybrid vehicles.

Clarissa Peterson, chief people officer for the firm, reports that staff members have been offered the incentive of $2,500 if they purchase a hybrid vehicle and $1,500 if they lease a hybrid. A hybrid vehicle, using both fuel and electric power, has less negative impact on the environment than traditional vehicles.

DLA Piper (www.dlapiper.com) developed the GSI to benefit the global community and employees by reducing the impact the company and staff have on the environment. According to Peterson, the GSI began as a senior management initiative with HR as an important stakeholder on the implementation team, along with the firm's co-chairs (CEOs), marketing, the operations and administrative group and senior partners from around the world. The group discussed measures the firm could take to become a better supporter of the environment and a better corporate citizen of the world.

Within the HR function, Peterson explains that she put together a small working group to learn more about global sustainability and energy conservation. "We read books, found out what other colleagues were doing, and studied best practices information from other organizations."

DLA Piper's GSI focuses on four key areas: energy, waste, travel, and procurement. Some of the sustainability efforts listed in a description of the GSI are easy to undertake, such as reducing paper consumption, eliminating unnecessary air travel, enhancing recycling programs, and switching off unused computers and lights.

The GSI at DLA Piper commenced with a week of events in January. During the week, the firm offered showings of the film "An Inconvenient Truth," with former Vice President Al Gore, which educates the public about the effects of global warming and how individuals can make a difference in saving the environment. DLA Piper offices also scheduled local events such as park cleanups and community service events.

Also during the kickoff week of the GSI, the firm's leadership challenged employees to do one thing differently every day to conserve energy, such as turning off lights or the computer screen when they went to lunch. In addition, the firm instituted two-sided copying whenever possible to lessen paper waste.

Peterson notes that energy conservation at home was also encouraged by distributing an energy-efficient lightbulb to each employee along with information explaining how much energy could be saved if the lightbulb was used instead of an incandescent bulb.

In addition to encouraging staff to purchase energy-efficient vehicles, DLA Piper also put an emphasis on employee commuting. "We put into place an alternative commuting program for 60 days," explains Peterson. Employees were encouraged to try different ways to get to work. For example, if they generally drove by themselves, they were urged to carpool or take public transportation and receive a bonus for their efforts. "We're helping people take a step toward a more environmentally responsive life," she notes.

Some staffers are taking turns driving for a month at a time in carpools and then switching drivers. Others, such as employees in the Washington, D.C., area, are finding out how convenient it is to take public transportation and be able to read or relax on the train as they commute to and from work.

The firm is also expanding its pretax dollar transportation benefit so that staff nationwide will be able to purchase their public transportation passes through a third-party vendor by October, notes Peterson. (Employees in areas such as the Washington, D.C. and Manhattan offices were already able to purchase pretax dollar passes.)

Meanwhile, the GSI Web page has been added to the firm's intranet so employees can read about environmental conservation tips and testimonials about employee efforts, as well as provide their own suggestions to GSI leadership. Peterson says she receives many ideas from staff that are brought to the appropriate department for review and possible implementation.

For other organizations and HR professionals thinking about starting their own GSI initiatives, Peterson suggests that in addition to the ideas that you can receive from DLA Piper's efforts, you should review best practices in your own industry. Next, she suggests that you determine which ideas fit best in your company culture and whether your employees and leadership are ready for these changes. Remember to communicate about the initiative on an ongoing basis as you unfold your own environmental conservation initiatives, she concludes.

Best Practice: When Employees Love Going to Work

An employer of choice in South Carolina, Comporium Group, a family-owned telecommunications company since 1894, has such a stable workforce that employees celebrated two 60-year and two 50-year anniversaries in 2006, according to Patricia Woods, manager of human resources development.

Winner of the Psychologically Healthy Workplace Award from the American Psychological Association, this 1,000-employee company provides services to customers in two South Carolina counties. "We have a very loyal employee base with virtually no turnover. Employees come here right out of high school and college, and most tend to stay for their entire career," Woods comments.

The voluntary employee turnover rate is less than 3 percent, says Andrea Cooper, manager of compensation and benefits. "The company is known for taking very good care of employees with good compensation and benefits and having a significant sense of social responsibility within the community. Comporium Group is a company that people gravitate to—they *want* to work here."

Employee work-life balance, wellness, and community responsibility are three important principles that guide the Comporium daily operations and blend to make life richer and better for employees and the community.

The owners and the employees participate in many local events. For example, one Saturday a year, the city of Rock Hill sponsors "Rolling in Rock Hill," when people in the community volunteer to paint, make minor repairs, and garden for elderly people or people with low incomes who need assistance with maintaining their homes and property, according to Cooper. "Comporium supports this annual event financially and with employee volunteers."

Another employee-driven community group is the local chapter of the Pioneers, a national independent telephone association started by telephone company retirees years ago. Comporium's Pioneers coordinated a holiday dinner donation for 70 families during this past year. Both employees' donations and company donations of food provide meals for those in need, explains Woods.

Community spirit even permeates the Comporium Group's employee wellness initiative, with more than 100 employees participating in the York County Shrink-Down, organized by the local YWCA, Piedmont Medical Center, and Winthrop

University. Six weeks into this program, which includes weekly weigh-ins and informational materials on nutrition, exercise, and wellness, Comporium employees had lost well over 300 pounds, says Cooper.

Ethics

Human Resources professionals have an important responsibility when it comes to helping a company achieve and maintain high ethical standards. Ethics responsibilities are both practical and legal. And failing to comply with either type of ethical responsibility can have devastating repercussions.

Employees who work for companies with a strong ethical culture are far more likely to be proud of their employer, have confidence in the organization's future, be satisfied with the company, and plan to continue working there compared to employees who work for companies with a weak ethical culture, according to a recent report.

The gap is most noticeable among employee ratings of pride. Ninety-four percent of workers who said they work in a strong ethical environment are proud of their organization, compared to only 33 percent who reported working in a weak ethical culture. That was among the findings of a report from Kenexa Research Institute, a division of talent acquisition and retention solutions firm Kenexa® (www.kenexa.com).

Among employees who work in a strong ethical culture, 91 percent are confident in their organization's future, 90 percent are satisfied overall with the company, and 76 percent plan to continue working there, the report states.

The numbers are much lower for those who work in a weak ethical culture: Only 33 percent express confidence in their organization's future, 25 percent are satisfied with the organization, and 42 percent plan to stay there.

In addition, workers in a strong culture are much more likely to say that company performance and reputation had improved in the past year and, when applicable, that they would advise friends and family to invest in the company.

Establish a Code of Ethics

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

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

Getting Started

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

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

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

> *We will respect every customer and every employee as a valued and equal individual with whom we interact every day, regardless of the rank of the employee or the amount of the customer's business that we can expect to fulfill. We will stand behind the quality and value of the products that we produce and will be honest and forthright in our communication with customers, employees, and the community.*

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

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

Promoting the Code

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

Reviewing the Code

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

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

Other Statements on Ethics

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

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

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

Ethics Issues that Are Challenging Employers

LRN, a company that provides education and management solutions, research, and analysis to employers, recently released an "ethics and compliance risk management practices report" that includes survey results from over 160 senior ethics, compliance, legal, risk, and audit professionals.

The survey found that companies still express concerns that employees fear retaliation for reporting incidents of potential ethics and compliance violations, despite the prevalence of anonymous reporting technologies. Almost all (98 percent) respondents offer an anonymous phone line or a confidential reporting channel. However, almost two-fifths (39 percent) of companies believe their employees still fear retaliation for reporting.

Detecting ethics and compliance violations presents a significant challenge for companies. About three-quarters of companies report significant difficulty in detecting ethics and compliance violations, both in their home markets (67 percent) and in their international operations (73 percent). The reasons cited include employees fearing retaliation by the company, feeling unmotivated (i.e., they feel that it isn't their problem), or failing to understand company policies.

Best Practice: Three Actions with the Greatest Impact on Employee Ethics

Many organizations erroneously think that establishing an ethics code will create an ethical culture. However, "that in and of itself is not going to create the ethical culture that you're looking for," says David Gebler, president and founder of Working Values, Ltd.

Working Values (www.ethics.com), a developer of values-based corporate responsibility and ethics awareness and compliance learning programs, and the Ethics Resource Center (ERC) (www.ethics.org), a nonprofit research organization, recently discussed the findings of their research project in a webinar titled "Ethical Actions that Matter: Critical Elements of an Ethical Culture."

The research identified the following three ethics-related actions that have the greatest impact on employee ethics and compliance:

1. Setting a good example
2. Keeping promises and commitments
3. Supporting others in adhering to ethics standards

"Ethics and compliance programs can be more effective when employees throughout an organization act to promote, rather than just talk about, ethics. Or, in other words, actions do speak louder than words," says Laurie Choi, an ERC research analyst who participated in the webinar.

"Employees know what is expected of them," Gebler says. What they need are "real-world examples" of how to act ethically in the workplace.

He says two fundamental aspects of human nature are important when it comes to keeping promises and commitments. First, "everybody really does want to do the right thing. Virtually everyone wants to be part of an organization where it's comfortable to do the right thing."

Second, employees want to be treated fairly, and they want to see that people who break the rules are held accountable, he says. "People want to know that people are being held accountable, and they expect promises and commitments to be met."

Working in an environment that supports adherence to ethical standards also impacts employee behavior. For example, Gebler has worked with an auto manufacturer that empowered its employees to stop the production line if they saw a defect. However, defects were getting through, and no one was stopping the line. Why not? "Bass fishing. The issue was bass fishing." Stopping the line resulted in mandatory overtime on Saturdays, which cut into the time that many workers typically spent bass fishing. "You couldn't imagine the pressure" on workers not to stop the production line.

Gebler says organizations that want to create an ethical culture should provide two types of training. First, employees need traditional ethics compliance training. "They need to know what the rules are," he says.

In addition, leaders need to be trained on effective communication, active listening, and other leadership skills that will help create an environment that allows employees to do the right thing, he explains. "This is as important, if not more important, than traditional ethics compliance training."

In a separate statement about the research findings, Gebler says, "The findings demonstrate that companies should seriously consider dedicating more resources to encourage leadership to set a good example, establish organizational trustworthiness, and help employees to make ethical decisions, rather than directing all their efforts to communicate about the specifics of a formal program."

#8—Metrics

Metrics are not unique to the HR profession. They are used in almost every area of business, in government, and in education. A metric is simply a way to measure and track key performance indicators. In education, the key metric is often student performance on standardized tests, which is then used to drive educational priorities to improve performance on the next round of tests.

In HR, metrics are used to measure and track the performance of a company's largest investment, its investment in human capital. More to the point, HR metrics measure the performance of a company's investment in hiring, training, and retaining employees.

What to Measure

Deciding what to measure is very important. Metrics should be tied directly to the business issues facing the company. These might include a need to cut costs because of price competition, improve customer satisfaction, or develop new technology to keep pace with competitors.

To be effective, the metric should not just report results but should show a cause and effect relationship. In addition, to the extent possible, the HR professional should try to use formulas, ratios, and language commonly used by the organization's other business leaders.

For instance, ROI, or return on investment, is universally understood in the business world. A company's investment in human capital (its employees) is usually its largest investment. And the HR professional needs to take the lead in identifying where these resources can best be allocated to meet the company's goals and how to hire, develop, and retain the human capital the company needs to stay competitive now and in the future.

A good metric is one that provides decision-makers with the data needed to make fact-based decisions. One example of a metric is measuring turnover in an organization. It is helpful to know what percent of the total number of employees left the company during the year. However, it is probably more useful to know how many of those people left voluntarily as opposed to those who left involuntarily.

When choosing what to measure in your organization, consider the following:

- Use data that are readily available and that can be gathered at regular intervals.
- Use the ratios, formulas, key performance measures, and language used by business leaders.
- Include measures of results and quality; don't limit the focus to costs.
- Tie metrics directly to the key challenges facing the business and the results that must be achieved.
- Use only metrics that add value in making decisions.
- Keep it simple. Metrics don't have to be complicated.
- Identify and compare results to key competitors whenever possible.

- Measure ROI, cost/benefit ratios, and impact on problems identified by business leaders.
- Avoid soft metrics based on feelings or intuition about a program, and use hard metrics or data to drive fact-based decision-making.

Types of Metrics Available to HR

Metrics generally measure one of the following:

- Increased job performance (e.g., new recruiting program resulted in new employees with first-year job performance ratings that are 30 percent higher than under the old program)
- ROI (e.g., new commission plan resulted in $100 of increased sales for each additional commission dollar paid)
- Impact of a program on revenue
- Decreased costs

There are a potentially endless number of metrics available to the HR professional. The key is to pick metrics that focus on key issues and tell the story. It may be that a series of single metrics when viewed together tell the story better than a single metric examined in isolation.

Following are some of the metrics the HR professional may want to consider for each functional area of human resources:

Metrics for the Recruiting Function

The recruiting or employment area is focused on hiring the employees the organization needs to meet its goals. Measurements include:

- Time to fill a vacancy
- Quantity and quality of applications based on recruiting source
- HR cost per hire
- Voluntary turnover rate of new hires during first year of employment
- Percent of new hires performing above average by the end of the first year
- Percent of new hires performing below expectations by the end of the first year
- Involuntary turnover rate during the first year of employment
- Satisfaction of managers with the hiring process based on survey of hiring managers
- Quality and retention rates of new hires by recruiting source
- Diversity ratios of new hires

In most cases, no single metric will adequately gauge the performance of the recruiting function. Rather, some combination of the metrics listed here, along with others created by the organization, will provide the information necessary to measure performance and effectiveness. The use of several individual metrics to measure a function is often referred to as an "HR scorecard" and will provide a more complete story of how the recruiting function is meeting goals.

Metrics for the Employee Relations

The employee relations function is different from the other HR functions in that it is a little harder to quantify. However, if the employee relations professionals are doing the job right, the company should see fewer lawsuits and complaints filed with state agencies, lower settlements when complaints are filed, and better outcomes when there are performance issues and/or conflicts in the workplace.

Some of the metrics that can be used to measure employee relations include:

- Number of complaints filed by employees
- Percent of complaints that proceed to a state agency, court, or other external dispute resolution
- Amount of time taken to resolve an internal complaint
- Percent of cases resolved with no money paid out by the company
- Percent of cases where large financial settlements or awards were made
- Breakdown of the types of complaints made by employees by department (e.g., sexual harassment, race)
- Costs associated with employee relations as percent of total operating costs
- Percent of cases where documentation was inadequate
- Number of sexual harassment complaints
- Number of complaints of unfair treatment
- Number of hours spent on training managers on employee relations issues
- Data from employee surveys on various employee relations issues such as understanding of policies
- Dollars spent on attorney's fees
- Dollars spent on attorney's fees as a percent of total employee relations costs

As with recruiting, companies will probably want to use some combination of these metrics as their employee relations dashboard. Comparisons from year to year will help evaluate the effectiveness of the employee relations function.

Metrics for Compensation Programs

Compensation programs are all about the numbers and, as a result, metrics are relatively easy to apply. Measurements may include:

- Compensation costs per dollar of profit
- Compensation costs per dollar of revenue
- Analysis of performance and production levels of employees paid in the top 30 percent of their salary range
- Total compensation costs as a percent of total company operating costs
- Analysis of compensation levels to the marketplace and key competitors
- Forecast compensation needs based on future plans
- Compensation mix, meaning fixed salaries versus performance-driven compensation

Metrics for Training Programs

Training is another area that can be difficult to quantify. However, it may be helpful to look at metrics that target the type of training and what it was intended to accomplish.

For instance, metrics for training programs can include:

- Cost of sales training as a percent of total sales
- Increase in hours of sales training compared to increases in sales
- Changes in performance levels of employees who received training
- Percentage of employees that cite lack of training or advancement as a reason for leaving
- Identification of key employees and percent that have received training
- Percent of performance appraisals that include training goals for employees

Strategic Alignment

The role of HR is changing as fast as technology and the global marketplace. Historically, the HR department was viewed as administrative overhead. HR processed payroll, handled benefits administration, kept personnel files and other records, managed the hiring process, and provided other administrative support to the business. These functions were viewed as administrative necessities but not as integral parts of the core business.

Today, many of these old administrative functions have been automated and/or outsourced. The positive result of these changes is that HR professionals have the opportunity to play a more strategic role in the business.

Business leaders focus on revenue, profit growth, market share, new products, and increasing capacity. These can all be measured using metrics that describe the current situation, compare current numbers with previous years' or with a competitor's position, and quantify goals and measure progress. By measuring the current situation compared to quantifiable goals, business leaders make data-driven decisions.

In order to be a business leader, the HR professional must utilize a similar approach to decision-making, one based on data and facts. Decisions related to the allocation of resources, technology purchases, succession planning, hiring and retention, training, employee performance, compensation programs, and outsourcing HR functions can all be based on data compiled through the use of appropriate metrics.

Measuring Your Results

Don't forget that the quality of results is as important as quantity or cost. Calculate ROI whenever possible to make the business case for HR. Use metrics to identify trends and head off problems on the horizon. Don't be afraid of data or of measuring results. Metrics can add to the HR professional's credibility and garner support for HR programs.

#9—Electronic Recordkeeping

The new federal rules on electronic discovery make having a comprehensive document retention policy even more important than before. In an audio conference hosted by BLR, Attorneys Jeffrey D. Neuburger and W. Lawrence Wescott II outlined what employers need to do when it comes to storing and retaining HR records.

A comprehensive document retention policy should be developed for all data within a company. The following tips will help employers create such a policy:

- Account for any applicable state and federal recordkeeping laws.
- Provide for disciplinary action against employees who violate the policy.
- Tailor the policy to business needs and the types of records that are created.

It is important that the policy is not only implemented, but enforced. Employers should train their employees on the policy periodically and conduct audits to make sure that all employees are complying with the policy. Employers should also discipline employees who violate the policy.

There are various places a company stores electronic data. These include electronic mail (inbox, sent, and deleted folders; user-created folders), desktop PCs and laptops, PDAs, Smartphones and cell phones, thumb drives, floppy disks and zip drives, CDs and DVDs, instant messages, IPods, Extranets, digital voicemail systems, company databases, employee-developed applications, Intranets, network servers, Web servers, and backup systems.

Document Retention and Litigation

The importance of having a document retention policy is especially revealed in litigation. Courts generally have not penalized employers for not having relevant documents that have been deleted under a *consistently enforced* document retention policy. In addition, the Federal Rules of Civil Procedure, which govern how cases in federal court are run, provide a "safe harbor" for documents that are lost because of a consistently enforced document retention policy.

However, employers cannot hide behind a document retention policy in all situations. Under the federal rules, employers must preserve "electronically stored information" (ESI) once the employer reasonably anticipates litigation or face sanctions from the courts. This can happen even before a lawsuit is filed, for instance, if an employee has complained to Human Resources. If this is the case, employers should take the following steps immediately, or face the possibility of court-ordered sanctions:

- Issue a "litigation hold" ordering that all routine disposal of ESI under a document retention policy be stopped and instructing all employees involved in the dispute to keep all relevant documents.
- The litigation hold must be issued by a high-level executive and be periodically reissued.
- Provide backup tapes to employees who may get nervous and start deleting data.

Discovery Issues and Electronic Records

The definition of ESI is continually expanding under the federal rules as new technologies are developed. This means that information technology (IT) departments are more important than ever in helping employers comply with their discovery obligations during a lawsuit. It is vital that there is open communication regarding what documents need to be kept for purposes of discovery between IT, human resources, and attorneys. It is also important that employers can establish a chain of custody since ESI is so easy to alter.

Training is key to making sure that relevant documents are maintained. Employers must train their employees not to "hit the delete key" to get rid of those documents they think may be incriminating. While most documents can be found through forensics or other methods, deleting records gives the impression that the document is bad for the employer when it may be completely neutral. In addition, purging documents may also lead to sanctions.

The extent of the duty to preserve will depend on the scope of the litigation, the number of individuals involved, and the time period.

Storing and Protecting Records

HR records must be stored separately from other company records, whether they are kept electronically or in paper form. Only those employees who need access to the records to perform their jobs should have access to HR records. This is especially true since one of the biggest risks today for identity theft is unauthorized access by employees to confidential information.

The presenters offered a few tips for storing HR records:

- Make sure that key stakeholders are involved in the design of your system, such as top-level executives, human resources staff, and the IT department.
- Maintain the records in a way that is consistent with other policies.
- Institute robust security features.
- Interface HR records into your record retention policy.
- Train all employees on record retention policy and procedures and monitor compliance.
- If need be, given the volume of discoverable documents, use a database for document storage. Many e-discovery vendors provide this service, and litigation support software services are available.
- Copy relevant files to a static media such as CDs or DVDs, though copying a file can alter metadata such as changing the date of creation.
- Disable automatic deletion policies.
- Segregate hard drives of impacted employees, or at least make an image of them.
- Contact third-party services providers.
- Database extracts from company systems may be necessary.

There are times when you may be able to dispose of discoverable data. In the ordinary course of business, data may be deleted in accordance with the company's records management policy. But once litigation commences, data should not be disposed of until the final disposition.

State Data Breach Notification Laws

Thirty-nine states now have laws requiring employers to give notice to affected residents in the event of a security breach. This is important in the context of HR records because these records often contain the personal information these laws aim to protect.

Providing notice under these security breach laws is both time consuming and expensive. One way employers can help prevent identity theft and unauthorized access to confidential records is encryption software. Many state security breach laws provide an exception for records that have been encrypted or rendered unreadable. The cost of purchasing and installing this type of software may save employers many headaches down the road.

State data breach notification laws started in California, as so many trends, legal and otherwise, do. When most of us were just beginning to worry about identity theft, California passed a "breach of security" law. It required any business or industry that collects personal information about individuals to notify all affected individuals if it learns that those data have been stolen or accessed by an unauthorized person.

Although California's law was passed in 2002, most other states didn't begin enacting similar legislation until 2005 or later. There was a much-publicized trigger: Early in 2005, Georgia-based ChoicePoint confessed that it had inadvertently sold data on approximately 145,000 U.S. consumers to Nigerian thieves during the second half of 2004.

But the company, which conducts background checks and drug tests and verifies identity and credentials for thousands of people, followed the only breach of security law that existed then—California's. Individuals around that state whose data had been stolen were individually notified. That got the attention of legislators in other states, who have been rushing ever since to put their own notification laws in place.

These statutes cover companies that maintain confidential data containing personal information, including an individual's name accompanied by, for instance, a Social Security number, driver's license number, credit or debit card or financial account information, and access code or password. Once the firm is aware that such data are no longer secure, it must determine whether there is a reasonable possibility that the data will be misused. If that's possible, the company must notify all affected state residents as promptly as possible.

In most states, notice must be given in writing, by telephone, or, if that's the way the firm usually communicates with the consumer, by e-mail. Many statutes provide that if the number of individuals involved makes the notification overly burdensome, or the firm doesn't have enough consumer contact information to handle the task, other media can be used—usually e-mail, posting on the company's website, and notice in major statewide media.

Best Practice: Train Remote Workers on Security Threats

To be realistic, just because a company's employees are aware of the policies regarding the security of corporate information does not ensure that employees will translate those policies into action. A recent report concludes that many remote workers may not be using appropriate measures to safeguard company data.

A global survey report released in October 2006 by Cisco Systems (www.cisco.com) stated that two out of three teleworkers said that they were cognizant of security concerns when working remotely. Many of those same individuals, however, admitted behaviors that undermine and contradict their awareness of secure use of their company-assigned technology hardware, according to the survey report. The technology covered by the survey includes computers, personal digital assistants, other wireless e-mail devices, and cell phones.

Bad Behavior Rampant

One of the inappropriate behaviors highlighted in the survey is sharing work computers with friends, family, or others. One of every five workers responding allowed others to use the company's computer to access the Internet.

Some of the reasons that respondents cited for sharing their technology tools were: "I don't see anything wrong with it." "I doubt my company would care." "I don't think letting them use it increases security risks."

The survey included more than 1,000 teleworkers in 10 countries including the United States, United Kingdom, France, Germany, Italy, Japan, China, India, Australia, and Brazil. The workers performed their job tasks in a variety of environments including homes, cafes, and hotels.

In three countries—China, Italy, and Brazil—about one in five workers admitted using a neighbor's wireless network when working from home. In the U.S., 12 percent admitted the same. Some of the reasons cited were: "I can't tell if I'm using my own or someone else's wireless Internet connection," "My neighbor doesn't know, so it's OK," and "It's more convenient than using my own wired connection."

Another bad behavior in which many workers engage is opening unknown e-mails. One out of four remote workers said that they open unknown e-mails when using company-issued devices.

Twenty-nine percent of the survey respondents reported that they use their company computer for personal use as well, and 40 percent of the total respondents admitted they use the computers for online shopping. In fact, 53 percent of United Kingdom workers admitted shopping online, while 27 percent said they use the computer for personal reasons.

It Only Takes a Few

Jeff Platon, vice president of Security Solutions Marketing at Cisco, says, "The unsafe behavior of 11 remote workers in a company of 100 can bring down a network or compromise corporate information and personal identities. It takes one security breach. For large enterprises with tens of thousands of workers, the potential risk is even more challenging."

He stresses that these security concerns call for IT departments to develop stronger relationships with computer users and to implement education programs to make the risks of sharing computers clear to employees.

An expanded approach to address this corporate and information security issue would be for HR professionals, teleworkers' managers, and IT to work together to develop policies and procedures that outline consequences for workers who do not abide by the company policies.

Making certain that employees understand and guard against outsiders accessing a company computer or other technological devices is critical to protecting the organization's computer hardware, corporate information, and the integrity of the computer network.

Identity Theft

The Federal Trade Commission (FTC) estimates that as many as 9 million Americans have their identities stolen each year. Identity theft has been the fastest growing crime in the United States for the past 3 years, according to the FTC, which predicts that in 5 years, the majority of Americans will have been victimized by identity theft.

Much of the identity theft that occurs in the workplace happens when employees steal personal information of the company's co-workers, customers, or clients via their employer's computer system. Identity theft also threatens enterprise security, enabling corporate espionage and fraud, and theft of hard assets and intellectual property.

Large-scale or frequent identity thefts also result in significant negative publicity, impacting sales, partnerships, and employee recruiting and retention. Therefore, employers need to carefully control access to employee and customer financial information (via password protection); carefully control the transfer of such information; and carefully control the destruction/recycling of company documents.

Employers also suffer other significant costs when their employees experience identity theft. Conservative calculations based on current identity theft figures indicate that an employer with 1,000 employees, who make an average of $40,000 salary per year, should expect to incur productivity losses of more than $600,000 per year.

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

Identity Theft Law Requires Employer Compliance

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

Protection as an Employee Benefit

One solution that provides an affirmative defense against potential fines, fees, and lawsuits is to offer some sort of identity theft protection as an employee benefit. An employer can choose whether to pay for this benefit. The key is to make the protection available, and have a mandatory employee meeting on identity theft and the protection you are making available, similar to what most employers do for health insurance.

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

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

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

Best Practice: Balance Employees' Privacy Concerns and Your Needs

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

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

- Create appropriate notifications to employees about what you will monitor and when you will have the right to search or conduct surveillance. Disseminate your policies frequently, to reduce employees' expectations of privacy.
- Tell employees specifically how you will protect their personal health information.
- Adopt a 'minimum necessary' standard for monitoring, searching, or collecting medical information. Avoid using a baseball bat if a flyswatter would accomplish what you want. If you're concerned only about computer visits to porn sites, say so, and don't penalize people who shop online unless you note low productivity.
- Implement other safeguards, beyond those for personal health information, to protect personal information such as Social Security numbers, home addresses, and other data that can be used in identity theft.
- Train your supervisors and managers to abide carefully by your privacy policies. For example, remind them not to disclose a subordinate's medical condition to co-workers or other supervisors without the employee's express permission. Tell them to ask HR or legal counsel if questions arise.
- Review not only federal privacy protections but also, more importantly, the laws particular to the states where you do business.

#10—Compliance Issues

It is a perennial challenge—HR professionals on the quest for information regarding changes in the laws that affect human resources management. 2008 is no exception to the rule of quickly changing legal landscapes, new regulatory obligations, and other legal traps set for the unwary.

The compliance challenges discussed below include:

- The EEOC's new guidance on Family Responsibility Discrimination
- Blogging
- Implementation of the EEOC's new EEO-1 Report form
- Effect of the final rules on Health Insurance Portability and Accountability Act (HIPAA) nondiscrimination

EEOC Issues New Guidance on Family Responsibilities Discrimination

The U.S. Equal Employment Opportunity Commission (EEOC) has published new guidance on how agency-enforced laws apply to workers with caregiving responsibilities. The agency says it is issuing the guidance as a proactive measure to address an emerging discrimination issue in the workplace.

EEOC reports that such complaints have risen by a whopping 400 percent in the last decade. It's not only parents of young children who have trouble balancing their careers and their responsibilities at home—and charge discrimination as a result. Many middle-aged workers are caring for elderly parents, either in their own homes or halfway across the country. So they need flexible work schedules and sometimes, a leave of absence. Employers that fear lost productivity and a greater burden on co-workers sometimes try to prevent caregivers from taking time off. So EEOC's new guidelines define how bias against these workers may be shown—and how to avoid it.

The enforcement guidance, *Unlawful Disparate Treatment of Workers with Caregiving Responsibilities,* provides examples under which discrimination against a working parent or other caregiver may constitute unlawful disparate treatment under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990 (ADA).

The guidance notes that changing workplace demographics, including women's increased participation in the labor force, have created the potential for greater discrimination against working parents and others with caregiving responsibilities, such as eldercare—all of which may vary by gender, race, or ethnicity. "With this new guidance, the commission is clarifying how the federal EEO laws apply to employees who struggle to balance work and family," says EEOC Vice Chair Leslie E. Silverman. "Fortunately, many employers have recognized employees' need to balance work and family, and have responded in very positive and creative ways."

The guidance, available online at www.eeoc.gov/policy/docs/caregiving.html along with a question and answer fact sheet, states: "This document is not intended to create a new protected category but rather to illustrate circumstances in which stereotyping or other forms of disparate treatment may violate Title VII or the prohibition under the ADA against discrimination based on a worker's association with an individual with a disability."

The guidance highlights a wide range of scenarios in which nondiscrimination law would come into play, including:

- Treating male caregivers more favorably than female caregivers.
- Sex-based stereotyping, such as reassigning a woman to less desirable projects based on the assumption that, as a new mother, she will be less committed to her job.
- Subjective decision-making regarding working mothers (that is, lowering subjective evaluations of a female employee's work performance after she becomes the primary caregiver of her grandchildren, despite the absence of an actual decline in work performance).
- Discrimination against working fathers and women of color.
- Stereotyping based on association with an individual with a disability, such as refusing to hire a worker who is a single parent of a child with a disability based on the assumption that caregiving responsibilities will make the worker unreliable.

"Benevolent stereotyping." We asked BLR Legal Editor Joan Farrell to review the guidance with us. She noted that what EEOC calls "benevolent stereotyping" can occur when a supervisor makes assumptions about a worker on the basis of his or her (usually her) status—as pregnant or as the mother of one or more small children, for example. Employers can unwittingly halt an employee's career progress in its tracks by "protecting" her from extensive travel or too much responsibility. The guidance is full of examples of what to do and what not to do—virtually all based on actual legal cases.

No new laws and no new protected class. Witnesses at EEOC's hearing reported as many as 17 different ways a plaintiff can sue for family responsibilities discrimination, and the guidance doesn't suggest they use any particular law. One choice is the ADA, which protects the right of a nondisabled person to associate with someone with a disability.

Farrell pointed out that an employee need not show that the person needing care is a member of his or her immediate family. A friend, same-sex partner, or distant relative can qualify as well under the ADA. It's also important to recognize that if an employee's performance deteriorates, and the employer has documented it, the individual can be disciplined or terminated even if the problems are the direct result of pregnancy or caregiving needs.

The heart of the guidance, stresses Farrell, is that any employee's caregiving responsibilities should be taken as seriously as those of any other employee. That, she feels, is going to be the toughest part of the guidance for compliance from employers. "In an ideal world," she comments, "you focus only on performance, but people and their lives are far more complex than that." She offered an example: A supervisor who's breezed through her two or three problem-free pregnancies may find it hard to be flexible for a subordinate who is exhausted and sick all the time during her pregnancy.

Want to live with—and comply with—EEOC's new guidance on responding to employee caregivers' needs? Here are several tips from Joan Farrell, J.D.:

- First, incorporate the essence of the new guidance in your antidiscrimination policy. Word the addition carefully, though, because there is no new protected class. That is (although we'd strongly advise against it), you can ignore the needs of all employees with family caregiving responsibilities. To treat them all equally, no matter how badly, is not illegal.
- Apply your newly amended policy with scrupulous consistency. That is, don't be more generous to pregnant employees than to those caring for elderly parents or nursing a spouse through an acute or terminal illness.
- Check the laws in your own state regarding parental status and family responsibilities discrimination (FRD).
- Apply your policies on flex schedules, leaves of absence, remote work, and other accommodations fairly and consistently among all employees who request them, including those with family responsibilities.
- If a pregnant employee has a temporary disability arising from the pregnancy, ensure she is treated consistently with any other employee with a temporary disability.
- Incorporate EEOC's new guidance on FRD into your organization's antiharassment and antidiscrimination training.

Blogging

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

Points to consider when formulating a blogging policy include:

- **Confidentiality.** Describe what obligations employees have to maintain the company's and customers' proprietary information in confidence (including existing policies, contracts, and laws regulating confidential information).
- **Respect of dignity.** Include a statement that the weblogger should respect the dignity of others and refrain from posting personal information about, or pictures of, co-workers, supervisors, or managers.
- **Competitors.** Can employees use a blog to tout your competitors? Criticize your competitors? Disparage your competitors? Defame your competitors?
- **Identification.** Are employees permitted to reference the company in their blog entries? If yes, employees should be asked to include a disclaimer stating that the blog posting represents their personal opinion and not the official position of the company.
- **Business developments/ideas.** If you require employees to disclose all business developments or ideas that are within the scope of the company's business, include that statement in this policy.

- **Media.** Can employees comment to the media about the company's business or about customers? Can they publicly criticize customers? Vendors? Co-workers? Supervisors or managers? The company?
- **Facilities.** Can employees use company facilities to develop, design, and maintain their websites/blogs? Are employees permitted to read and post messages to blogs during work time or from the workplace?
- **Links.** Can employees link to the company's website? The websites of customers or vendors?
- **Monitoring.** State that the company monitors its facilities (e.g., Internet, computer systems, networks) for compliance with this policy and monitors the use of its name and trademarks on the Internet.
- **Deleting.** State that the company will delete from its website, files, computer systems, and storage media any unauthorized materials it may find, at any time and without notice.
- **Correlate with other policies.** Include references to related policies such as computer and Internet use policies, confidentiality, duty of loyalty, media, harassment, proprietary rights, copyright, and the like.
- **Discipline.** What discipline will be imposed if the employee violates the policy? Generally, employers should reserve the right to decide the appropriate level of discipline in any given circumstance up to and including the immediate termination of employment.

How to Comply with Requirements of the New EE0-1 Report

The EEO-1 Report—formally known as the "Employer Information Report"—is a government form requiring many employers to provide a count of their employees by job category and then by ethnicity, race, and gender. For the first time in many years, the EEOC has substantially revised the EEO-1 Report form. Early in 2006, EEOC announced that substantial changes were made to the race and ethnic categories, as well as to the job categories, on the form.

All covered employers had to use the new EEO-1 reporting format with the report due in September 2007, but did not need not resurvey their workforce in order to complete that report. Employers will need to resurvey and report on new race/ethnic categories for their workforce until they begin to prepare for the September *2008* EEO-1.

Managing the EEO-1 Report's New Job Categories

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

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

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

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

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

Tracking Race and Ethnicity Category Changes

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

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

The definitions of the seven new racial classifications are:

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

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

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

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

HIPAA Nondiscrimination Rules

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

Health Factors

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

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

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

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

Exclusion for Specific Diseases

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

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

Source of Injury

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

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

Effect on Wellness Plans

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

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

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

Five Requirements

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

1. The total reward for all the plan's wellness programs that require satisfaction of a standard related to a health factor is limited; generally, it must not exceed 20 percent of the cost of employee-only coverage under the plan. If dependents (such as spouses and/or dependent children) may participate in the

wellness program, the reward must not exceed 20 percent of the cost of the coverage in which an employee and any dependents are enrolled.

2. The program must be reasonably designed to promote health and prevent disease.
3. The program must give individuals eligible to participate the opportunity to qualify for the reward at least once per year.
4. The reward must be available to all similarly situated individuals. The program must allow a reasonable alternative standard (or waiver of initial standard) for obtaining the reward to any individual for whom it is unreasonably difficult because of a medical condition, or medically inadvisable, to satisfy the initial standard.
5. The plan must disclose in all materials describing the terms of the program the availability of a reasonable alternative standard (or the possibility of a waiver of the initial standard).

Wellness Programs that Comply

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

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

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

Conclusion

We hope that you have enjoyed this special report and that you found the information contained in this report useful. BLR strives to provide Human Resources professionals with practical and easy-to-use information on a wide variety of topics.

If you would like to see the complete library of publications available through BLR, please visit our website at www.blr.com or call our Customer Service Department at 800-727-5257.