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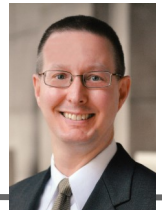
September, 2015

There is NOT a monthly meeting scheduled for September due to the SHRM NE Conference. We hope to see you in October!



President's Message

Joel Scherling, LHRMA President-Elect



Does Your Performance Appraisal System Measure Up?

I've been spending a great deal of time lately thinking about the amount of time each of my staff members spend on various HR tasks and extent of the return on our investment of that time. We've been spending an inordinate amount of time on performance appraisals during the last couple of years, thanks to the implementation of a new electronic performance appraisal system. We shifted from the traditional paper-and-pencil method, which focused mostly on job duties to an electronic process that included ratings on job duties, competencies and goals. The system includes an automated workflow and the ability for HR to monitor progress of appraisal completion. Sounds good, right?

The new system has brought some benefits, such as increased appraisal completion rates. However, I'm unsure as to whether we're much better off as an organization than we were before the switch. Are supervisors now more in touch with their employees? Has the quality of feedback regarding employee performance improved? Are supervisors checking in with their employees more frequently instead of holding one annual, high-stakes meeting? I don't think so.

So, what now? Should we tweak the content of the appraisal (i.e., work duties, competencies, goals)? Should we alter the rating scales – again? Should we keep the employee self-review component as it is, simplify it, or ditch it entirely? Should we change the automated work flow and retain the indirect manager review? Should we abandon the entire process and go with something different? In order to expand my thinking, I did some research to find out what others are finding to be effective strategies.

Consider what Netflix did. They stopped doing formal performance appraisals and substituted informal 360-degree reviews. The reviews were simple: people were asked to identify things that colleagues should stop, start, or continue doing. In the beginning, they used software that allowed anonymous responses. Over time, they shifted to signed feedback, and many teams held their 360 evaluations face-to-face.

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Netflix feels that if managers have simple and honest discussions about performance on a regular basis they will get better results than using a system that “grades” everyone.

Here’s another case study for you. Accenture (a management consulting, technology services and outsourcing company) shifted from performance “management” to performance “achievement.” How is their approach different?

The Norm	Accenture
☞ Backward-looking	☞ Forward-looking
☞ Delayed feedback	☞ Real time feedback
☞ Once-a-year discussion about performance	☞ Frequent discussions about performance
☞ Low knowledge of areas for employee growth	☞ High knowledge of areas for employee growth
☞ Low support for career aspirations	☞ High support for career aspirations
☞ Low alignment of personal & company priorities	☞ High alignment of personal & company priorities
☞ Use of scales, points and sometimes rankings	☞ No points and rankings

Is it time for you to re-evaluate your performance management practices? As for me, the longer I’m in the field of HR, the more I’m leaning toward trying the unorthodox. Things could only improve, right?

Would you like to learn more about the subject? If so, check out the many books available through the [SHRM Bookstore](#).

Wellness

A Few Interesting Articles for the Health of Your Employees

Dr. Randy McCracken

McCracken Chiropractic Clinic

HOPE YOU ARE ENJOYING YOUR SUMMER! HEALTH NEWS!

A few interesting articles for the health of your employees:

1. Acetaminophen is not effective in the treatment of Spinal Pain.

Study was published in the British Medical Journal 3/15

2. Use of statins increase Diabetes risk by 46 percent

Study published Diabetologia 2015

3. The Prescription Painkiller Epidemic

The sale of these drugs has more than tripled between 1999 and 2010. The rate of deaths from them has also more than tripled.

Study published in Journal of the American Academy of Orthopaedic Surgery 2015

What to do for spine or joint pain:

Seek the help of an experienced doctor of chiropractic utilizing conservative forms of pain relief. We offer natural pain relievers and muscle relaxers that do not have any harmful side effects. I have utilized Cold-low-level-laser in my office for years to my patients. It not only speeds up the healing process 150 times, it also causes the release of natural pain relievers inside the body. It has proven extremely effective in relieving pain for spinal problems and carpal tunnel. Should you have any questions, do not hesitate to give me a call or e-mail me at 402-421-2277, drmccracken@windstream.net for more information.

Legal Update

Are Unpaid Interns “Employees”? It Depends.

Mark A. Fahleson

Rembolt Ludtke LLP

Unpaid internships have served a useful purpose for organizations and interns alike, but have recently come under attack. A number of high-profile lawsuits have been filed challenging the legitimacy of unpaid internships, including one that led to a \$6.4 million settlement in 2014.

Most of the challenges to unpaid internships have been filed under the federal Fair Labor Standards Act of 1938 (“FLSA”), which requires, among other things, that covered “employees” be paid a minimum wage and overtime pay. Unfortunately, over the years the U.S. Department of Labor (“DOL”) and courts have used different tests to determine whether interns are “employees” for purposes of the FLSA.

According to the DOL and its reading of a 1947 U.S. Supreme Court decision, whether interns/trainees are “employees” under FLSA depends upon all of the circumstances surrounding their activities on the premises of the employer. Only if all of the following 6 criteria apply can an intern/trainee not be deemed an “employee” within the meaning of the FLSA:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
2. The training is for the benefit of the trainees or students;
3. The trainees or students do not displace regular employees, but work under their close observation;
4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion his operations may actually be impeded;
5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period; **and**
6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

The DOL’s rigid 6-factor test was recently rejected by the U.S. Court of Appeals for the Second Circuit (which covers Connecticut, New York and Vermont) in *Glatt v. Fox Searchlight Pictures, Inc.* (791 F.3d 376, July 2, 2015).

In *Glatt*, plaintiff Eric Glatt and his co-plaintiffs were unpaid interns who worked on production of the film *Black Swan* in New York. After production ended, Glatt took a second unpaid internship relating to *Black Swan*’s post-production. The other plaintiffs served as unpaid interns on other movie productions or at Searchlight’s corporate offices in New York. The trial court, upon considering the “totality of the circumstances” and applying a version of the DOL’s 6-factor test, held that plaintiffs were actually “employees” covered by the FLSA and thus entitled to unpaid wages and overtime. According to the trial court:

They worked as paid employees work, providing an immediate advantage to their employer and performing low-level tasks not requiring specialized training. The benefits they may have received—such as knowledge of how a production or accounting office functions or references for future jobs—are the results of simply having worked as any other employee works, not of internships designed to be uniquely educational to the interns and of little utility to the employer. They received nothing approximating the education they would receive in an academic setting or vocational school.

On appeal, the Second Circuit reversed the trial court’s decision in favor of the unpaid interns. The Second Circuit rejected the DOL’s 6-factor test and instead adopted a “primary beneficiary test,” *i.e.*, “whether the

(Continued on page 4)

intern or the employer is the primary beneficiary of the relationship.” The court also identified a non-exhaustive list of factors for courts (and employers) to weigh and balance when deciding whether the intern or the organization is the primary beneficiary of the relationship, with no one factor being dispositive:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
5. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

LESSON: Unpaid internships and training programs are clearly under attack. While the *Glatt* decision does not apply directly to Nebraska, its rejection of the DOL's rigid 6-factor test and adoption of the “primary beneficiary” test bodes well for the future development of the law in this area.

If your business or organization (yes—even nonprofits!) uses unpaid interns, it would be prudent to evaluate the purpose and structure of your unpaid intern program in light of the authority set forth above, and to take proactive steps so as to avoid potential liability.

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Drawing Winner

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for the October program.

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If you are an employer with an employee that is a current LHRMA member, then you can post your HR-related job opening on our website for **FREE!** Just email Kathy Harper at lhurma0048@yahoo.com.

If you are looking for a human resource position, then check it out!
Go to <http://lincolnhr.org/blog/hr-job-openings/>

This is also an excellent resource for students who are seeking an HR position or for companies to advertise if they have summer internships available. Take advantage of this great resource—you can't beat the price!

EAP Corner

Wellbeing in the Workplace: Taking a Proactive Approach

Valerie Williams, LMHP

Continuum EAP

Get eight hours of sleep. Exercise for thirty minutes a day at least three times per week. Joey has soccer practice and Susie has dance. Don't forget that science fair project due tomorrow. Is that project for work complete? The deadline is noon tomorrow. Your co-worker is out sick and the boss is on vacation. There is no doubt about it! Most employees have a lot on their plate. The majority of the workforce commits a significant amount of time to their work responsibilities while balancing other roles and personal interests. Wellbeing has many variations and related concepts, but general definitions in the context of workplace programs include: emotional well-being, psychological well-being, staff/employee well-being, and promoting healthy lifestyle choices.



Creating a healthy balance in personal and professional responsibilities is a worthy and important endeavor in demonstrating employee value in the workplace. Rather than viewing employees as “cogs in the wheel,” companies can construct a proactive role in advocating healthy balance in the workplace and beyond, as illustrated in the wheel of wellness pictured above.

Promoting workplace wellbeing has a significant return on investment when done with a positive, proactive approach. Wellness initiatives improve employee engagement and productivity and may lower absenteeism and staff turnover. Supervisors can learn to recognize early signs of declining motivation or “spill over” stress from personal obligations to prevent problems from escalating. Maximizing interpersonal engagement by encouraging an open door policy in communication is beneficial to cultivating an overall sense of support from leadership and emotional wellbeing in the workplace.

EAPs can provide guidance to supervisors for implementing policies and developing wellness programs that incorporate effective characteristics of successfully established programs, such as recommending educational materials to provide to employees. Particular suggestions may include information on social and emotional wellbeing issues like emotional intelligence, resilience, mindfulness, stress management and conflict resolution.

A few ideas for integrating wellbeing in the workplace:

1. Offer onsite lunch and learn seminars, intranet resources, brochures and fact sheets on wellness topics such as stress management, resiliency, work/life balance, and coping with conflict
2. Utilize preventive health screenings and appropriate incentives to increase awareness and participation in company sponsored wellness campaigns
3. Training managers and supervisors on EAP services as a resource to them and their employees helps them provide timely intervention for employee performance management support

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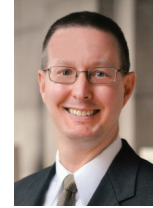
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