



Lincoln
Human
Resource
Management
Association



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www.lincolnhrr.org



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Volume 6, Issue 11

November, 2015

PROGRAM: Baby Boomer to Gen Y, What are the Fiduciary Challenges ?

WHEN:

Tuesday, November 17th, 2015
11:00 – 11:30 Registration
11:30 – 12:00 Lunch & Announcements
12:00 – 1:30 Keynote Speaker
1:15 – 3:15 Workshop

WHERE:

Lincoln Country Club
3200 S 24th Street, Lincoln, NE

Parking is FREE!

COST:

Program Registration Fee: LHRMA members—\$15

All Other Attendees—\$25

College Student Chapter Members—FREE (You must register with Jenessa Keiser, College Relations Chair)

Workshop Registration Fee: All Attendees—\$35

MENU: Soup and salad bar, assorted desserts, iced tea and coffee.

DEADLINE: Register/cancel your registration by **12:00 noon, Friday, Nov. 13th.**

REMINDER: There is a \$10 fee for late registrations and for no-shows. This \$10 fee is in addition to the regular registration fee. Please try your hardest to register on time, as late registrations and no-shows make it difficult on everyone involved.

About Our Program:

From Baby Boomer to Gen Y, What are the Fiduciary Challenges? Ken Broman will discuss the differences of the generations and their attitudes about savings. How does a Baby Boomer think about retirement planning differ from how a Gen Y thinks about retirement planning. How does this change your fiduciary responsibility as a plan sponsor? This session will focus on what challenges there are for fiduciaries and how to manage them.

About Our Workshop:

Keeping Plan Sponsors out of the Headlines Plan sponsors have loads to think about when it comes to the retirement plans they offer employees. Are you doing enough to reduce your fiduciary liability or do you only think you're doing enough to reduce your fiduciary liability? With the potential of claims coming from so many directions, what's a 401k plan sponsor to do?

Both the program and workshop have been pre-approved by HRCI and SHRM for general credits hours.

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Join Ken Broman to learn about how to reduce your fiduciary liability. Ken will discuss how to analyze 401(k) providers to review costs and conflicts, what to look for when monitoring funds and providers, and 5500 requirements. Learn key best practices to keep your company out of the headlines.

About the Presenter:

Ken Broman is life-long Nebraska resident and a graduate of the University of Nebraska Lincoln. With his wife Michelle, they are raising three beautiful children and have personally experienced the value of planning for college when their oldest daughter went to Truman State University in Kirksville, MO. Beginning in 1992, Ken started his financial services career with a local bank and quickly moved into a trust department with an emphasis in investment management, employee benefit administration and client education. Ken has received the designation of Investment Advisor Representative and is registered with FINRA completing the series 7, 63 and 65 licenses. He also holds the professional designation of Certified Financial Educator (CFE). He also serves as an adjunct instructor for the University of Nebraska Lincoln, Business College – Finance Department teaching Personal Finance and Retirement Planning courses. He is very passionate about education and giving back through volunteerism.



President's Message

Melissa Price, LHRMA President

Best Places to Work...it has a good ring to it! It signifies that a company takes care of and invests in its employees. It gives a company the well-deserved distinction to the community. Think about your organization – Are you ready to be a best place to work in Lincoln? If not, have you thought about how you can get ready?

LHRMA is again sponsoring Lincoln's Best Places to Work for 2016. While the award ceremony isn't until April, it is already time to start the process. Here's how it works –

- November 2nd – January 6th: Register your company
Visit www.bptw.com/lincoln to sign up your company.
- January 11th – February 12th: Employees take the survey provided by Quantum Workplace
Once your company is registered, your employees will need to take a survey to answer questions about your workplace and culture. The results of this survey determine the winners. You receive the results of the survey and have the option to take a deeper dive by purchasing extensive survey results.
- April 20th: Best Places to Work Award Celebration
The top five companies from small, medium, and large categories are recognized. If your company is one of the winners, you will receive media coverage provided through the Journal Star and the ability to use Best Places to Work in your marketing. If you don't participate or do not win, no worries the luncheon still provides great ideas on what other companies do for their employees.

To help you prepare and hear what some of the past winners have done, LHRMA is hosting an educational event in December before our annual social. Additional information regarding this free event will be distributed soon.

Thanks to Woods & Aitken for again putting on this great event!

-Melissa Price-

Legal Update

The Next Endangered Species: Independent Contractors

Jack L. Shultz

O'Neill, Heinrich, Damkroger, Burgmeyer & Shultz, P.C., L.L.O.

On July 15, 2015, the United States Department of Labor (DOL) issued an Administrator's Interpretation regarding the misclassification of employees as independent contractors. The DOL targets an industry and audits employers to determine whether they have correctly classified their employees and independent contractors. In 2014, out of all of the businesses audited for misclassification, more than 80% were in one of the priority industries identified by the DOL. This year, the DOL has identified the construction industry as one of its priorities.

Misclassification occurs when an employer improperly classifies an individual as an independent contractor when the individual should have been classified as an employee. This allows the employer to avoid the expenses associated with employees. Employers found in violation could face potential fines, as well as be held liable for back payroll taxes, workers' compensation, unemployment insurance premiums, and minimum wage and overtime payments. None of which are owed to independent contractors. The DOL is also concerned about some employers intentionally misclassifying their workers as a means to cut costs and avoid compliance with labor laws. This results in lower tax revenues for the government and an unfair advantage over employers who correctly classify their workers.

In order to make a determination as to whether a worker is an employee or an independent contractor under the Fair Labor Standards Act (FLSA), courts use the multi-factorial "economic realities" test, which focuses on whether the worker is economically dependent on the employer or in business for himself or herself. The definition of employ under the FLSA is "to suffer or permit to work." Thus, applying the economic realities test in view of the expansive definition of "employ" under the FLSA, most workers should be labeled as employees under the FLSA. While courts have described independent contractors as those workers with economic independence who are operating a business of their own, the DOL's interpretation indicates that they are a dying breed.

The DOL states that the factors of the economic realities test should not be applied in a mechanical fashion, but examined and analyzed in relation to one another. Further, no single factor is determinative. These factors include: (A) the extent to which the work performed is an integral part of the employer's business; (B) the worker's opportunity for profit or loss depending on his or her managerial skill; (C) the extent of the relative investments of the employer and the worker; (D) whether the work performed requires special skills and initiative; (E) the permanency of the relationship; and (F) the degree of control exercised or retained by the employer.

The ultimate inquiry under the FLSA is whether the worker is economically dependent on the employer or truly in business for him or herself. If the worker is economically dependent on the employer, then the worker is an employee. If the worker is in business for him or herself (i.e., economically independent from the employer), then the worker is an independent contractor.

Each factor of the economic realities test is discussed below to provide a general overview of the factors and give some examples to help illustrate whether a worker would be classified as an employee or independent contractor.

A. Is the Work an Integral Part of the Employer's Business?

If the work performed by a worker is an integral part of the employer's business, it is more likely that the worker is economically dependent on the employer. For example, a carpenter is integral to a con-

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struction company's business because the company is in business to frame homes, and carpentry is an integral part of providing that service. This situation would indicate that the carpenter is an employee. However, the same construction company may contract with a software developer to assist the company in tracking bids, scheduling project and crews, and tracking material orders. The software developer is performing work that is not integral to the construction company's business, which is indicative of an independent contractor.

B. Does the Worker's Managerial Skill Affect the Worker's Opportunity for Profit or Loss?

This factor focuses on whether the worker's managerial skill can affect his or her profit and loss. The ability of a worker to work more hours and the amount of work available from the employer have nothing to do with the worker's managerial skill and do little to separate employees from independent contractors. This factor should not focus on the worker's ability to work more hours, but rather on whether the worker exercises managerial skills and whether those skills affect the worker's opportunity for both profit and loss.

For example, a worker providing cleaning services to corporate clients performs assignments only as determined by the cleaning company. The worker does not schedule assignments, solicit work from other clients, or advertise the worker's services. The worker regularly agrees to work additional hours to earn more money. In this situation, the worker does not exercise managerial skill that affects the worker's profit or loss. However, if this worker produces his or her own advertising, negotiates the contracts, and decides what jobs to do, the worker is exercising managerial skill that affects the opportunity for profit and loss which is indicative of an independent contractor.

C. How Does the Worker's Relative Investment Compare to the Employer's Investment?

The worker should make some investment (and undertake at least some risk for a loss) in order for there to be an indication that he or she is an independent business. The worker's investment should not be relatively minor as compared to the employer. The Tenth Circuit determined that rig welders' investments in equipped trucks costing between \$35,000 and \$40,000 did not indicate that the rig welders were independent contractors when compared to the employer's investment in its business. ***Baker v. Flint Eng. & Const. Co.***, 137 F.3d 1436, 1442 (10th Cir. 1998).

D. Does the Work Performed Require Special Skill and Initiative?

A worker's business skills, judgment, and initiative, not his or her technical skills, will aid in determining whether the worker is economically independent. A highly skilled carpenter who provides a specialized service for a variety of area construction companies may be demonstrating the skill and initiative of an independent contractor if the carpenter markets his services, determines when to order material and the quantity of materials to order, and determines which orders to fill. However, if a carpenter is told what work to perform, when to perform such work, and does not make any independent judgments, this factor would point to the carpenter being an employee.

E. Is the Relationship Between the Worker and Employer Permanent or Indefinite?

Permanency or indefiniteness in the worker's relationship with the employer suggests that the worker is an employee. A worker who is truly in business for him or herself will avoid a permanent or indefinite relationship with an employer. The Second Circuit has stated that the key is whether the lack of permanence or indefiniteness is due to operational characteristics intrinsic to the industry (for example, employers who hire part-time workers or use staffing agencies) or the worker's own business initiative. A worker's lack of a permanent or indefinite relationship with an employer is indicative of independent contractor status if it results from the worker's own independent business initiative.

For example, a situation where an editor who has worked for a publishing house for several years and only completes edits in accordance with the publishing house's specifications, using its software indicates permanence to the relationship and therefore an employment relationship. But where an editor works for several

publishing houses and chooses and negotiates his or her own contracts the worker may be an independent contractor.

F. What is the Nature and Degree of the Employer's Control?

As with the other economic realities factors, the employer's control should be analyzed in light of the ultimate determination whether the worker is economically dependent on the employer or truly an independent contractor. The worker must control meaningful aspects of the work performed such that it is possible to view the worker as a person conducting his or her own business. Some employers assert that the control that they exercise over workers is due to the nature of their business, regulatory requirements, or the desire to ensure that their customers are satisfied. However, control exercised over a worker, even for any or all of those reasons, still indicates that the worker is an employee.

Conclusion

Under the FLSA's definition of "employ" most workers should be classified as employees. No single factor listed above is controlling over the other and the factors as a group should be analyzed to determine whether the worker is really in business for him or herself (and thus an independent contractor) or is economically dependent on the employer (and thus an employee). Employers who fail to correctly classify their workers could face fines, back payroll taxes, insurance premiums and possible overtime pay. It is important to note, however, that this article summarizes a DOL interpretation of the Fair Labor Standards Act. The FLSA is a set of federal statutes. This analysis does not necessarily apply to any state or other regulatory set of statutes or rules.

Editor's Note: This article is not intended to provide legal advice to our readers. Rather, this article is intended to alert our readers to new and developing issues and to provide some common sense answers to complex legal questions. Readers are urged to consult their own legal counsel or the author of this article if the reader wishes to obtain a specific legal opinion regarding how these legal standards may apply to their particular circumstances. The author of this article, Jack L. Shultz, can be contacted at 402/434-3000, or at O'Neill, Heinrich, Damkroger, Bergmeyer & Shultz, P.C., L.L.O., P.O. Box 82028, Lincoln, NE 68501-2028, or jshultz@ohdbslaw.com.

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Your LHRMA chapter has earned the 2015 SHRM Learning System Champion status!! Thank you to Amy Spellman, Certification Chair, and all of our volunteer instructors for making this happen!



An advertisement for Aureus Group. The top section has a purple background with the text "Gain MORE from your search" in white and yellow. Below this, on a green background, is the text "We're your regional staffing resource with a national reach, bringing expertise to each search since 1969." The Aureus Group logo is prominently displayed, with the text "AUREUS GROUP" in white and "Finance | Systems | Executive" below it. To the right of the logo is the phone number "402.891.6900" and the website "aureusgroup.com". The bottom section has a purple background with the text "Temp • Direct Hire • Match Hire® • Interim" in white.

EAP Corner

7 Habits of Highly Effective Supervisors

Greg Brannan, Director of Business Development & Training Consultant
Deer Oaks EAP Services

In the spirit of Stephen Covey's popular book, "The 7 Habits of Highly Effective People", below is a list of 7 of the key habits/management practices utilized successfully by supervisors and managers today:

- **Be a Positive Leader** – Employees look to their leaders for encouragement, especially during difficult circumstances. Effective supervisors maintain a positive mind-set and set a positive tone for their teams on a daily basis. They manage their own attitudes and emotions well, so that they can stay optimistic for the staff during challenging situations.
- **Get to Know Your Employees Well** – Effective supervisors make spending time with their employees more important than their own task list. They get to know their employees as individuals - their needs, interests, and strengths. Through this focus they learn what's important to each employee, and how to best support and motivate them.
- **Engage Your Team** – To maximize employee engagement it's important to solicit their input into department goals, project plans, etc. Employees will get more enthusiastic about the work when they have an opportunity for input. When assigning work, highly effective supervisors will determine the "what" (project, task, goals, etc.), but let the employees have input into the "how" (specific work plan, methods, etc.).
- **Practice Supportive Management Techniques** – To create an environment that improves employee motivation and initiative, it's important to utilize management approaches that are less directive and more supportive. For example, employees typically respond better to supervisors that use a collaborative coaching approach than they do to one who is highly directive and micro-managing.
- **Become an Effective Coach** – Supervisors who utilize a collaborative coaching approach create a respectful environment for their team that improves employee morale, motivation, and initiative. The key communication strategy utilized in a coaching approach is "often ask" for the employees input, instead of "always directing" them.
- **Interact Well with Your Staff** – Having a good relationship with their supervisor is one the most important aspects of job satisfaction for most employees. Highly effective supervisors are sensitive to the importance of their day-to-day interactions with their staff and are careful to be attentive (spend time), courteous (friendly & kind), and respectful (listen well) with their employees.
- **Skillfully Manage Difficult Situations** – Highly effective supervisors skillfully and tactfully handle difficult situations and issues with their employees. For example they listen respectfully to the employee (even if they disagree), and remain kind even when correcting performance or behavior.

Deer Oaks is a leading national provider of EAP and Work/Life services that enhance employee health, morale and productivity.

For more information, contact Greg Brannan at (301) 829-0364 or gbrannan@deeroaks.com.



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Welcome!

You've joined an outstanding organization!

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Drawing Winner

Who Says There's No Such Thing
as a Free Lunch?

Congratulations to **Todd Hoppe**
with Hampton Enterprises.
Todd will receive free registration
for the November program.

LHRMA is pleased to recognize the following human resource professionals who were recently the first to earn the new SHRM credentials during the Spring Exam Window:

Connie Peterson, SHRM-CP
 Rachel Szelag, SHRM-SCP
 Nicholas Topp, SHRM-CP

The new certification is based on the SHRM Competency Model, which identifies eight behavioral competencies and one technical competency – HR Knowledge or HR Expertise – that HR professionals need to advance their careers and improve effectiveness in the workplace.

SHRM Certification includes taking an exam to show mastery of the SHRM body of knowledge and participating in approved furthering education opportunities to keep the designation. SHRM Certification is a symbol of professional achievement.

LHRMA offers a SHRM Certification Study Group twice a year to assist HR professionals in obtaining their certification. If you would like more information about SHRM Certification or LHRMA's Certification Study Group please go to www.lincolnhhr.org or contact Amy Spellman at certification@lincolnhhr.org.

How About YOU—Are You Already Certified?

Time is Running out to get your SHRM Certification via the Online Tutorial Pathway for free without having to take another exam! We are proud to say that approximately 80 of our 135 eligible members have already taken advantage of this one time opportunity to gain their SHRM Certification.

The new SHRM credentials, the SHRM Certified Professional (SHRM-CP) and SHRM Senior Certified Professional (SHRM-SCP), reflect the expanding role of today's HR professional.

If you are a current holder of an HR generalist certification* in good standing and you obtained your certification by January 31, 2015, you are eligible for SHRM's new certification – at no cost – by completing the online tutorial pathway described in the steps below by December 31, 2015.

1. Visit www.shrmcertification.org/pathway.
2. Create an account and select "Online tutorial Pathway."
3. Affirm that you hold a valid HR credential.
4. Enter Current Certification Details: certification name, issue date and expiration date.
5. Agree to abide by the SHRM Code of Ethics.
6. Access and complete the Online Tutorial via the link sent to your e-mail.
7. Receive your SHRM credential once you complete the pathway process, and begin a three-year recertification cycle. For up-to-date details on recertification, visit: www.shrmcertification.org/recertification.

You will not lose or have to give up any of your current credentials in order to obtain the new SHRM certification. Any professionals who did not obtain a generalist certification by January 31, 2015, will not be eligible for the online tutorial pathway and instead can take the SHRM certification exam during the spring or winter exam window.

*Eligible HR generalist certification programs include: PHR, SPHR, GPHR, HRBP, HRMP and IPMA-CP. PHR, SPHR, GPHR, HRBP and HRMP are registered trademarks of the HR Certification Institute and are not SHRM certifications. SHRM has no rights to the "IPMA" trademark, and IPMA-CP is not a SHRM certification. Other HR generalist credentials may also qualify based on SHRM's review.

If you have questions please contact Amy Spellman at certification@lincolnhhr.org.



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We're on the web!
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