# LHRMA

Lincoln Human Resource Management Association

AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT



PO Box 81066, Lincoln, NE 68501-1066

www.lincolnhr.org



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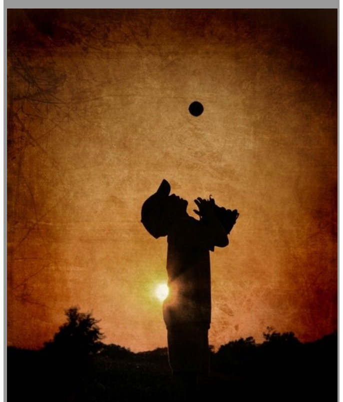

## Inside this issue:



## Lunch Program: Death by a Thousand Paper Cuts: Employee Performance Management and the High Engagement Paradigm

## Workshop: Roundtable Discussions: Best Practices in Performance Mgmt.

**The luncheon program has been pre-approved for 1.0 PDC from SHRM and 1.0 General Recertification hour from HRCI.**

**The workshop has been pre-approved for 2.0 PDCs from SHRM.**

**WHEN:**

**Tuesday, June 13, 2017**

11:00 – 11:30 Registration

11:30 – 1:00 pm Keynote Session

1:15 – 3:15 pm Workshop

**WHERE:**

Nebraska Innovation Campus Center

2021 Transformation Dr., Lincoln, NE 68508

**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

**DEADLINE:** Register/cancel your registration by **12:00 noon, Friday, June 9th**.

**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 the Program -** Performance reviews aren't engaging. Your managers and employees hate them. You probably do too. There's no more reviled event under the workplace sun. Yet, you probably just inflicted another round of reviews on your employees. Again.

Does that describe your performance appraisals? Why do we tolerate the status quo? What if we didn't have to?

We know that engagement drives performance. Shouldn't a performance management process be engaging? If it isn't, how could it ever promote performance? Isn't that the point?

This session explores the reasons why we in HR have failed to innovate performance management – for far too long. We'll look at excuses we make for sticking with the status quo, and offer solutions to consider for each of them.

We'll show how we can efficiently leverage continuous employee feedback and do so in an accountable, engaging and strategic way.


*(Continued on page 2)*

**Objectives:**

1. Learn why average performance management consistently fails its primary objective: To improve employee performance. (Human Resources Development)
2. Understand how broken PM systems do more harm than good. (Strategic Management)
3. Realize a culture rich in feedback is no longer a luxury, but a workforce requirement. (Workforce Planning and Employment)
4. Identify practical strategies to upgrade performance management processes to make them as engaging as they should be. (Human Resources Development)

**Presenter Bio:** David Weisser has helped leaders make data-driven decisions for over 15 years. David earned expertise in workplace culture and organizational engagement as Director of Consulting for Quantum Workplace and Director of Research for Kenexa – an IBM company. David is now the Product Director for ReviewCloud, where he focuses on making performance management engaging.

## About the Workshop— Roundtable Discussions: Best Practices in Performance Management

**Roundtable Facilitators:**
David Weisser, Product Director, ReviewCloud
Chad Thies, President, ZelleHR
Marsha Gerlach, SHRM-SCP, GPHR, SPHR, VP of HR, Eye Care Specialties
Gail Sutter, LMHP, CEAP, Executive Director, Continuum Employee Assistance

# President's Message

**Joel Scherling, LHRMA President**


Have you taken stock of your onboarding program lately? Does the evaluation data confirm you are educating and energizing your new employees? Are you even collecting evaluation data?

How do you measure up? Doris Sims, SPHR, author of the book Creative Onboarding Programs cites these all-too-frequent problems with new employee orientation programs:

- Providing too much information too soon,
- Providing a "minimalist" program that only provides procedural information,
- Including too much lecture from one instructor or speaker,
- Failing to prepare the employee's workspace, computer, and/or phone for the first day,
- Signaling to the employees that the orientation program is boring, inconsequential, or something to just endure, and
- Lacking a formal program and process altogether.

Are one or more of the above onboarding weaknesses present in your process? Sims offers these tips for re-inventing an onboarding program.

⇒ Build the orientation program around a theme to keep it cohesive and interesting.
⇒ Communicate the unwritten rules of your organization (e.g., chain of command and decision-making norms, level of risk taking that is either encouraged or discouraged).
⇒ Address "new job remorse" by creating a dynamic and motivational experience through interactivity, a variety of speakers and experiences, and opportunities to connect with others.
⇒ Communicate your organization's culture, expectations, and social norms (e.g., "normal" work hours).
⇒ Accelerate new employee productivity by having the immediate supervisor provide job-specific training, discuss performance expectations and goals, and link the employee's work to the organization's strategic plan.
⇒ Don't forget to tell them about any special initiatives.
⇒ Provide a mentor, sponsor or buddy to help the new employee acclimate.
⇒ Include management orientation for employees in supervisory or leadership positions.

**Want to learn more?** Check out Creative Onboarding Programs by Doris M. Sims, McGraw-Hill publisher. Her book includes tips on developing or updating a new employee onboarding program, onboarding agendas and checklists, ideas for various organization types (e.g., onboarding in a global organization or onboarding volunteers in the nonprofit sector), "virtual" onboarding, and new employee games and activities.

**Find us on Facebook. Become a fan and join the conversation.**

# Legal Update

## What is the "Fiduciary Rule" and why should plan sponsors care?

Keith T. Peters and Katie A. Joseph
Cline Williams Wright Johnson & Oldfather, L.L.P.

In 2016, the U.S. Department of Labor (the "DOL") finalized a regulation defining the term "fiduciary" for purposes of employee benefit plans under the Employee Retirement Income Security Act ("ERISA") and individual retirement accounts ("IRAs") under the Internal Revenue Code (the "Code"). [i] The rule and its exemptions, commonly referred to as the "Fiduciary Rule," have prompted praise, consternation, and litigation. While the Fiduciary Rule's ultimate fate seems unclear, it remains on the books as of the deadline for this article.

No matter what happens to the Fiduciary Rule, sponsors of qualified plans and IRA owners should be aware of its ripple effects. Many providers have or will change the services they provide to plans and the terms under which they provide services. IRA owners may begin to see different fee arrangements and more robust disclosures. This article briefly explains the Fiduciary Rule, its significance for sponsors of qualified plans, its current status, and possible future changes.

**What prompted the Fiduciary Rule?**

The Fiduciary Rule is, in part, an update to regulations implementing ERISA's definition of "fiduciary." The statutory definition includes a person who renders investment advice for a fee or other direct or indirect compensation to an ERISA plan.[ii] This very broad definition matters because ERISA holds fiduciaries to a high standard of care and loyalty and imposes personal liability on those who fail to meet it. The Code imposes excise taxes on certain interested transactions, called "prohibited transactions" between fiduciaries and qualified plans. Understandably, a service provider wants to know with some certainty whether it constitutes a fiduciary. DOL regulations dating back to 1975 narrowed the definition with respect to investment advisors using a five-part test. Those regulations pre-date many of the features we think of as standard in qualified plans, like participant-directed accounts and rollovers to IRAs.

The Fiduciary Rule reflects the DOL's attempt to bridge the perceived gap that has opened up between the five-part test and the way qualified plans receive investment information and advice. In the preamble that accompanied the final rule, the DOL explained that the five-part test permitted non-fiduciary advisers to operate with undisclosed conflicts of interest without liability under ERISA, and to give advice based on interests other than those of plan participants and beneficiaries.[iii]

**Who is a "fiduciary" under the new rule?**

The Fiduciary Rule sweeps much wider than the former five-part test, and deems a person a fiduciary if he or she –

- Receives a fee or other compensation;
- Provides to a plan, a plan fiduciary, or a plan participant a recommendation as to –
  - Buying, holding, or selling securities or other investment property;
  - Investment policies or strategies or portfolio composition;
  - Selection of others to provide investment advice, investment management, or account arrangements; or
  - Recommendations as to rollovers or transfers; <u>and</u>
- The person directly or through an affiliate –
  - Represents or acknowledges fiduciary status;
  - Agrees to provide advice based on the recipient's particular needs; or
  - Directs advice regarding a particular investment decision to a specific recipient.[iv]

The Fiduciary Rule defines "recommendation" as a communication reasonably perceived as a suggestion to take or refrain from a course of action. The rule includes several exceptions to the definition, explained in the next section. "Compensation" includes funds received from any source, and includes commissions, sales loads, finders' fees, revenue sharing, marketing and distribution fees, gifts, gratuities, and expense reimbursements.

Significantly, the DOL drafted the rule so that the new fiduciary definition also applies to IRAs in addition to qualified plans. While the change might not directly affect qualified plan sponsors, they may see changes in the way service providers communicate with participants about rollovers as a result.

*(Continued on page 5)*

The Fiduciary Rule does not apply to health, disability, and term life insurance policies, so long as they do not contain an investment component. It does not apply to investments outside of qualified plans and IRAs.

**How does the Fiduciary Rule affect qualified retirement plans?**

Qualified retirement plan service providers are likely to make changes (if they have not already) to ensure that their services either fit within an exception to the definition of "recommendation," or meet the conditions of an exemption to the prohibited transaction rules.

Plan sponsors may see service providers change communications directed to plan participants to fit within the following categories, which do not constitute "recommendations" under the Fiduciary Rule:

- General communications through newsletters and research reports;
- Educational materials about a plan;
- Information about the terms and operations of a plan or IRA;
- General financial, investment, and retirement information not specific to an investment offered by a plan or IRA;
- Asset allocation models based on hypothetical individuals; and
- Questionnaires intended to estimate retirement income needs, assess the impact of asset allocations, evaluate distribution options, or estimate retirement income based on a hypothetical individual.[v]

A separate carve-out from the definition of "recommendation" applies to certain communications with in-house fiduciaries for larger plans (those with $50 million or more in assets) who have financial expertise. This carve-out requires specific documentation, and does not apply if an advisor receives compensation in connection with a transaction that is the subject of the communication.[vi] Providers for very large qualified retirement plans may seek to change relationships with those plans to fit within this exception.

Service providers may also modify their arrangements with qualified plans in order to meet the conditions for an exemption to the prohibited transaction rules. The DOL issued a series of exemptions and amendments to pre-existing exemptions, each with its own nuances and conditions.[vii] Of these, the "Best Interest Contract Exemption" (or "BICE")[viii] potentially applies most broadly. The DOL drafted BICE to be the "new normal" for those who provides investment advice to retirement plans in exchange for either level fees or variable compensation, including indirect compensation.

To rely on BICE in dealing with an ERISA plan, an advisor must acknowledge fiduciary status, make certain mandatory disclosures, adopt certain policies and procedures, comply with impartial conduct standards, and refrain from using certain disclaimers, class action waivers, and unreasonable dispute resolution procedures. An investment advisor relying on BICE must adhere to the following standards, referred to as Impartial Conduct Standards:

- Provide investment advice in the best interest of the investor using reasonable care under the circumstances, and without regard to the advisor's or advisor's affiliate's interests;
- Receive no more than reasonable compensation in connection with the recommended transaction; and
- Ensure that statements about the transaction, fees and compensation, conflicts of interest, and other relevant matters are not materially misleading when made.

Importantly, investment <u>managers</u>—those who have discretion to make investment decisions—cannot rely on BICE.

**What's the status of the Fiduciary Rule?**

As of the deadline for this article, the phase-in period for the Fiduciary Rule begins on June 9, 2017. During the phase-in period, investment advisors may rely on BICE if they adhere to the Impartial Conduct Standards. The requirements to make specific written disclosures and representations regarding fiduciary status apply effective January 1, 2018.[ix]

President Trump's post-inauguration executive orders and memoranda regarding certain Obama-era regulations include the Fiduciary Rule. In addition, several parties have brought legal action against the DOL to enjoin the rule's enforcement. While the Fiduciary Rule's ultimate fate remains uncertain, it has already made an impact on the retirement investment landscape. Many providers have already taken steps toward compliance. In addition, public interest has turned toward fees and conflicts of interest associated with investment advice. The ultimate result may be that more robust disclosures and the Impartial Conduct Standards (or something like them) become the standard of care for those providing investment advice.

*(Continued on page 6)*

**What should qualified plan sponsors do?**

Qualified plan sponsors should determine which of the service providers to its retirement plans consider themselves fiduciaries. For non-fiduciary providers, qualified plan sponsors should determine which exception applies. For either group, plan sponsors should develop an understanding about changes to services and participant communications. With respect to fiduciary advisors, that understanding should also include plans for compliance with the fiduciary rule. BICE may prompt advisors to issue new contracts—as always, plan sponsors should carefully review agreements and negotiate appropriate revisions. Plan sponsors should know who pays service providers to its retirement plan and how those payments are determined.

Plan sponsors should also review their own forms, policies, procedures, and participant communications to ensure that they conform to the new rules. Additional review and training may be appropriate if a plan sponsor's employees provide advice regarding investments and distributions. More generally, qualified plan sponsors should consider providing training to in-house fiduciaries who make investment decisions—including selecting the "menu" of options for participant-directed investments—about the nature of the fiduciary role, its accompanying responsibilities, and best practices.

4842-3429-8184, v. 2

[i] Definition of the term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice, 81 Fed. Reg. 20946 (Apr. 8, 2017) (to be codified at 29 C.F.R. Parts 2509 and 2510).
[ii] ERISA § 3(21)
[iii] 81 Fed. Reg. at 20946.
[iv] Id. at 20997 (to be codified at 29 C.F.R. § 2510.3-21).
[v] Id. at 20997–98.
[vi] Id. at 20999–21000.
[vii] See, e.g., 81 Fed. Reg. at 21089 (PTE D-11713, exemption for "riskless principal transactions"), 21139 (amendment to PTE 75-1, extensions of credit to avoid failed securities transactions), 21147 (amendment to PTE 84-24, transactions involving insurance agents, brokers, pension consultants, insurance companies, and principal underwriters), 21181 (amendments to PTEs 86-128 and 75-1, transactions involving broker-dealers), 21208 (amendments to PTEs 75-1, 77-4, 80-3, and 83-1, revising pre-existing exemptions to conform to the new Fiduciary Rule).
[viii] 81 Fed. Reg. at 21002.
[ix] Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Advice, 82 Fed. Reg. 16902 (Apr. 7, 2017).

## Congratulations!

LHRMA is pleased to recognize the following human resource professionals who earned the new SHRM credentials during the Winter Exam Window:

Britney Bandars, SHRM-CP
Nichole Hall, SHRM-CP
Todd Hoppe, SHRM-SCP
Jennifer Kray, SHRM-SCP

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.lincolnhr.org or contact Amy Spellman at certification@lincolnhr.org.

## NEW MEMBERS


**Kimberly Beethe**
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**Alanna Everman**
Recruiter
Nelnet
alanna.everman@nelnet.net

Welcome!  You've joined an outstanding organization!

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## Jobs, Jobs and More Jobs!


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 lhrma0048@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!

**Drawing Winner**

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

Congratulations to **Hallie Yousif** with the State of NE. Hallie will receive free registration for the June program.

# Wellness News

## Items in the News for the Health of Your Back

Dr. Randy McCracken
McCracken Chiropractic Clinic

#1: The American Academy of Physicians finally updated their clinical practice guidelines for treating lower back pain. They now recommend spinal manipulation and other non-invasive therapies as the first options for acute-subacute and chronic lower back pain before medications. I wonder what took them so long since the U.S. Department of Health and Human Services indicated spinal manipulations was the best treatment for lower back pain in 1994.

#2: According to Dr. Alan Hedge, professor of the Human Factors Lab at Cornell University, "The risk of musculoskeletal discomfort increases with as little as one hour of computer use per day, and the risk of musculoskeletal injury in someone who works on a computer four or more hours per day is nine times greater than it is for a one-hour-per-day user."

#3: There is a 90 percent decline in the production of enzymes that burn fat after one hour of sitting.

#4: Sitting while leaning forward produces an 85 percent increase in lumbar disc pressure compared to standing relaxed. Encourage reclining, leaning back against the chair. The reclining tension in the chair should be adjusted to support the body weight. Sitting up straight is not the end goal. Movement nourishes the spine, lubricates the joints, removes muscle toxins and improves circulation. Reclining is the preferred posture, as it has a lower spinal load than being hunched over or a 90-degree posture.

#5: You need to have a chair that fits your body. The chair should be adjustable to seat height, seat depth/ lumbar height, arm rest height and backrest tension. Seated, your feet should be flat on the floor with your thighs parallel to the floor. The backrest should fit the curve in the small of your lower back. Most desks are at the standard height of 29.5 inches unfortunately the average person would need to be 6'4" tall to sit properly at this desk height. No wonder lower back pain is prevalent. Your keyboard should be at a height so the wrists are in a neutral position and the armrests should be no higher than seated elbow height.

#6: The current thinking on the sit time vs. stand time is to sit for 45 minutes and stand for 15 minutes. Explain to your patient that when they are standing, as soon as they shift the pelvis to one side or the other, it is time to sit back down.

Information from an article by Jeffrey Tucker D.C/ Dynamic Chiropractic/4-2017

# FINANCIAL PRESSURES

## PUTTING THE SQUEEZE ON WORKER PRODUCTIVITY

**72%** of U.S. adults surveyed feel ***stressed*** about money.

**29%** Say personal financial issues have been a distraction at work.

OVERDUE

**48%** Have handled personal financial issues during work.

**40%** Of individuals distracted by financial issues at work are between the ages of 35 to 44.

**24%** Nearly 1/4 of working Americans report using credit cards to buy monthly necessities b/c they can't afford them otherwise.

**32%** Close to 1/3 of Americans say finances, or lack of money, prevent them from living a healthy lifestyle.

**49%** Almost 1/2 of working U.S. adults find it hard to meet household expenses on time.

## PRIMARY FINANCIAL CONCERNS AMONG AMERICAN WORKERS:

**20%** Not being able to meet monthly expenses.

**25%** Not having sufficient savings for unexpected expenses.

**18%** Not being able to retire when they want to.

With strong data indicating that finances are a top stressor for working Americans, it is no wonder companies are starting to look at how employees' financial issues affect their work performance and ultimately the employer's bottom line. Increased stress levels also may lead to higher health care costs, delayed retirement and decreased morale.

Continuum EAP encourages companies to look at their employees' overall "well-being" and to offer services that focus on a three-pronged approach related to physical, emotional and financial health. Employee Assistance Programs are available to assist employers in providing proactive and targeted education and resources to address employee need.

**Continuum recommends employers provide structured financial wellness programs that:**

- Provide employees with a confidential financial fitness assessment.
- Offer financial coaching to help employees set goals and establish action plans.
- Direct employees to appropriate resources.

If you have questions about how an Employee Assistance Program can offer financial resources and coaching services, please contact Continuum EAP's Gail Sutter at 402-476-0186 or gsutter@4continuum.com.

Continuum

Sources: PricewaterhouseCooper's (PwC). "Financial Wellness Survey." 2011.
American Psychological Association. "Stress in America." 4 February 2015.

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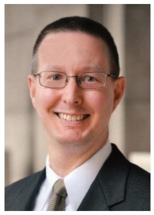

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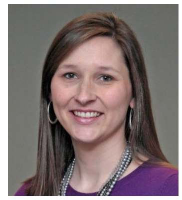

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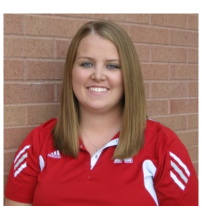

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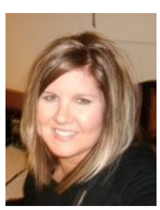

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