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LHRMA
Lincoln Human Resource Management Association

AFFILIATE OF
SHRM[®]
SOCIETY FOR HUMAN
RESOURCE MANAGEMENT

February Program

Program on February 12 Features — 6 Questions for Organizations and Their Employees to Answer in Order to Have a Successful and Secure Retirement

Just Like “Mom and Dad”

Join us for our February Program on February 12. Alan Kuzma, the owner of Kuzma Financial Services will present from 12:00 to 1:00 p.m.

About the Presentation

As HR professionals we all possess a fiduciary responsibility to educate our employees when information emerges that will improve their lives. It's been over 40 years since legislation was passed changing how America saved for retirement from the defined benefit approach to the defined contribution

method.

We all know that each one of us is responsible for our own retirement. All of us were provided the tools to construct our retirement; 401(k), deferred comp, etc. however, there was no “instruction manual” that was included.

Today, there is a new process that provides for a more confident and lower stress retirement for our employees. This process uses six important questions that everyone should answer.

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**RECERTIFICATION
PROVIDER**
2018

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EXCEL
2017

About the Presentor

Alan Kuzma, the owner of Kuzma Financial Services has over 40 years of retirement planning experience. He is a graduate of Nebraska Wesleyan University with a degree in Economics and holds CLU-Certified Life Underwriter and ChFC-Chartered Financial Consultant credentials. He now focuses on designing and implementing retirement income strategies that stand the test of time.

February Program

WHEN AND WHERE

Tuesday, February 12, 11:15—1:00 p.m. at the Lincoln Firefighters Reception Hall, 241 Victory Lane, Lincoln, Nebraska

REGISTRATION FEES:

Lunch Program Registration Fee: LHRMA members – \$15

All Other Attendees – \$25

College Student LHRMA Members

Luncheon attendance is free for SHRM designated student chapter members. Current SHRM designated chapters include: University of Nebraska-Lincoln. Students must register through Jenessa Keiser, College Relations Chair, college.relations@lincolnhn.org for free meeting attendance.



2019 LHRMA Membership Renewals

Visit www.lincolnhn.org to renew!

WELCOME NEW MEMBERS

LHRMA welcomes the following new members:

Bria Williams
Talent Acquisition Associate
ReSource Pro
Bria_williams@resourcepro.com

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HR/Safety Coordinator
Fast Global Solutions
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Carly Hunzeker
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President's Message

By Lindsay Selig, LHRMA President



The state legislature officially kicked off on January 9th and for those of you following, it may be an interesting session!

Within the first few days, there were at least six HR related bills introduced. Not sure if any of them will gain traction, but interesting to see so many introduced already.

So here is where I will now put in my plug to “get involved”! It’s always a great reminder that our state senators are there to represent us and the businesses in the community, so don’t hesitate to let your voice be heard!

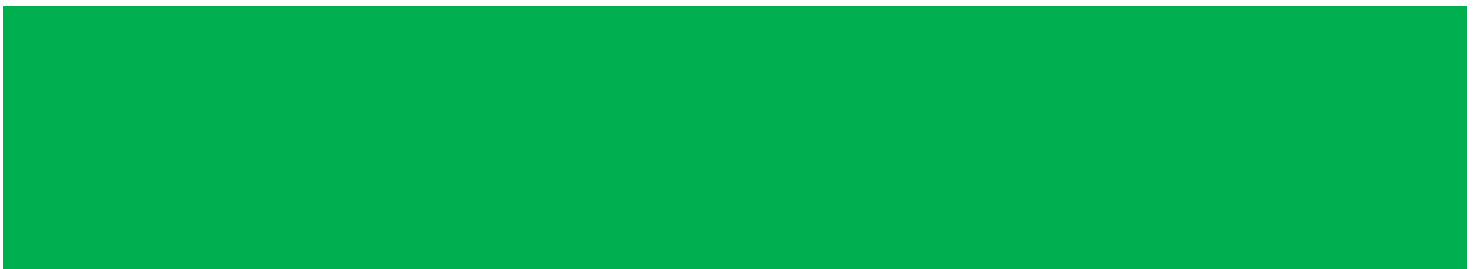
I know, I know, you’re thinking to yourself “Lindsay, I have no idea the best way to even go about that.” Well let me tell you, it can be easy!

First, educate yourself on what these bills say. One of the best resources we have available for this is on the LHRMA website. Did you know you can find a summary of the bills that have been introduced right there? And not only that, the summary will continue to be updated throughout the session.

Secondly, follow the status of any bills that you feel passionately about throughout the session. The legislative website is great for this - they post updated information almost daily and there is an easy to follow calendar of all bill hearings.

Finally, voice your opinion! You can do this by testifying at a hearing or simply sending a position letter to the committee chair prior to the hearing. Or if you aren’t comfortable with either of those options, let our LHRMA board know, we are happy to discuss feedback on various bills and possibly send a position letter on behalf of our organization.

I encourage each of you to be informed HR professionals and the LHRMA organization is here to help you!



Legal Update

A Practical Guide to Restrictive Covenants in Nebraska: Answers to Seven Commonly-Asked Questions

By Henry L. Wiedrich, Esp.
Cline Williams Wright Johnson & Oldfather, L.L.P.



In my legal practice, I regularly advise employers and employees on drafting, interpreting, and enforcing restrictive covenants under Nebraska law. Restrictive covenants include confidentiality, non-competition, and non-solicitation obligations, and come in a wide variety of purposes and scopes. Questions on these restrictions arise at varied points—at the outset of an employment relationship; at the end of an employment relationship when all are wondering what can and cannot be done; when a demand letter is received or written; when a lawsuit arises; and at various points in between these events.

My hope is that these questions and answers will help provide you a starting point from which to assess restrictive covenant issues, although each situation is unique and no answer can be applied to all situations (how is that for a lawyerly disclaimer?).¹

#1

Question: I would like to have my employee sign a non-compete agreement that prevents him from working for or starting a competitive business within 25 miles of our office. Can we do that?

Answer: In most circumstances, this type of non-compete agreement against an employee with no ownership interest in the company would not be enforceable under Nebraska law. The cases in Nebraska analyzing restrictive covenants can be divided into two very clear groups: (1) cases involving employees; and (2) cases involving the sale of business, where an individual is selling a business or has an ownership interest in the business. In the sale of business context, a reasonable geographic restriction against competition, which is generally limited to the area where the company's customers are obtained and served, is enforceable if reasonable in time (generally 3 years or less, although longer restrictions have been enforced).

#2

Question: If we can't do a geographic restriction, what is generally enforceable against a rank-and-file employee?

Answer: Generally, employee restrictions can include a confidentiality and non-disclosure provision (limited to certain defined, non-public information), a reasonable customer non-solicitation provision, and a reasonable employee non-solicitation provision. The employee non-solicitation provision is discussed in Question No. 6.

When a client asks this question, they are usually asking about a customer non-solicitation. The often-expressed thought is: "Well, if we can't stop them from working for a competitor in the area, can we stop them from contacting and soliciting our customers? Perhaps our prospective customers?" As reasonable as such a solution sounds, this too must be further limited in order to be enforceable in Nebraska.

The well-accepted and litigated position of Nebraska courts is that a customer non-solicitation provision must be limited to those current customers with whom the employee actually had personal contact and did business with while employed. Thus, the provision should not be drafted to simply apply to all customers, regardless of whether the employee had contact, nor should it be drafted to apply to prospective or past customers.

¹The information in this article is being offered as an outline of general information on the subject to assist in the development and implementation of practices and policies. It is offered for educational and informational purposes only and is not intended as legal advice.

Legal Update (continued from page 5)

Additionally, it is best practice to limit the covered-customers to a certain timeframe of employment, such as: “all customers with whom Employee had personal contact and did business with *during* the last 18 (or 12) months of his/her employment with Company.” The reason for doing this is because otherwise the restriction would apply to every customer relationship handled by the employee, regardless of whether those relationships have gone stale. If such time limitation is not included, the opposing party will almost certainly raise this point and argue the provision is unenforceable.

#3

Question: How long should the customer non-solicitation period be?

Answer: Even if an employer limits the non-solicitation period to current customers with whom the employee had personal contact and did business with, the restriction will not be enforceable if it extends for an unreasonable period of time. The cases show a sliding scale of enforceability. Although it all depends upon the circumstances, the general rules of thumb are these:

- 12 months is usually enforceable. This is generally the time period I recommend.
- 18 months may be enforceable, depending upon the circumstances, but it is getting aggressive.
- 24 months is aggressive and the employer runs the very real risk of the provision being held unenforceable, although such periods have been found enforceable.
- > 24 months is most likely unenforceable.

#4

Question: Assuming what you say is true about what is generally enforceable against a rank-and-file employee in Nebraska, can't we just be aggressive and let the Court apply the agreement as far as it deems it enforceable?

Answer: Taking an aggressive position on employee restrictive covenants is always an option, but the employer must also be prepared for the practical effects of such position. The practical effect is that the entire restrictive covenant, and perhaps the entire agreement, may be deemed unenforceable by a Nebraska court. In some states, when this happens, the court will reform or “blue pencil” the agreement to render it enforceable. Essentially a court evaluating a restrictive covenant with “terms X, Y, and Z” might say “terms Y and Z, as drafted, are unenforceable, but term X is enforceable so we will enforce only term X.”

However, Nebraska courts will not reform or “blue pencil” an agreement; instead either that provision or the entire agreement will fail. Thus, taking an aggressive approach may ultimately leave the employer with no protection. This can be devastating when an employer has multiple employees with the same agreement, and the agreement fails. Word will spread quickly that there are no enforceable restrictions. Thus, I counsel clients away from such aggressive positions, where a less aggressive position will provide real protection.

However, some employers take an aggressive position with the goals of (1) feigning a strong belief regarding enforceability, even when they understand the risks; and (2) capitalizing on employee's misunderstanding of what is and is not enforceable. Employees may very well comply with an overly-aggressive, unenforceable restrictive covenant simply because they do not know it is unenforceable or they fear the former employer will attempt to enforce it, thereby drawing the employee into unwanted litigation. Still other employees take an aggressive position simply because an enforceable restriction does not provide them with what they deem is real or worthwhile protection.

#5

Question: What about employee non-solicitation or employee-raiding provisions?

Answer: An employee non-solicitation or employee-raiding clause prevents an employee from attempting to hire away the employer's other employees. There is little to no case law in Nebraska regarding the enforceability of such provisions. In light of the absence of case law, we suggest that employers apply the same principles learned from the customer non-solicitation provisions, namely apply it only to current employees with whom the employee had personal contact and set a reasonable time limit on the provision (12 to 18 months).

Legal Update (continued from page 6)

#6

Question: The employee has been working with us for about 2 years, but we would like to revise our restrictive covenant and have the employee sign it. Any issues?

Answer: Every contract must be supported by consideration in order for it to be binding. Consideration is generally some form of compensation or benefit, or it might be some promise to act or not to act. Nebraska case law is clear that commencement of employment, even if it is at-will employment, is sufficient consideration to support the execution of a restrictive covenant.

Although I believe there is a strong argument to be made that continued at-will employment is also sufficient consideration to support the execution of a revised agreement, there is no case law directly answering that question. This poses some risk when executing a new agreement. Employers either accept this risk and rest on continued employment, or they negate the risk by providing some additional consideration for the execution of the agreement. This additional consideration usually comes in the form of a signing or other bonus, new terms of employment (i.e., a raise, new position, termination protection, etc.), or some other tangible benefit to the employee for signing. Providing additional consideration is the more conservative, risk-adverse approach.

#7

Question: Can't we just cover confidentiality in the employee handbook?

Answer: Employers can certainly include a confidentiality policy in its employee handbook; however, the policy will not be contractual and the employer will not be able to use it to seek damages or protect confidential information via a contractual claim. What I sometimes encounter, and which I highly advise against, is including a confidentiality agreement as part of the employee handbook or in the handbook receipt form. Employers go to great lengths to avoid having their employee handbooks treated as contracts, and for good reason. These efforts are all but undone when the employer then includes an express contract in the handbook.

In short, if you want an enforceable confidentiality agreement, make it separate from the employee handbook. If you simply want a policy that does not have contractual effect, you can include this in the employee handbook. Do not treat your employee handbook as conferring contractual obligations.

Supervisor NOTES: Top 3 Most Common Mistakes Leaders Make



“Experience is the name every one gives to their mistakes.” - Oscar Wilde

The truth is we all make mistakes. Learning from them can help save yourself a lot of trouble, especially when you are a supervisor or leader. Here are the top 3 most common mistakes those in leadership roles make and what you can do to avoid them.

1. Not providing feedback

According to 1,400 execs polled by Ken Blanchard companies, failing to provide feedback is the most common mistake that leaders make. When you don't provide timely feedback, you're depriving your team members the opportunity to improve their performance.

To avoid: Provide regular feedback to your team every week.

2. Not making time for your team

It's easy to get wrapped up in your own workload and therefore unavailable to your team members.

To avoid: Block out time in your schedule for project updates with each team member. Have a “regular” time that your “door is always open,” so that they can come to you during that time to seek help if they need it.

3. Failing to define goals

Don't let team members muddle through their days—set clear, specific goals.

To avoid: Set SMART goals for your team. Devise a team charter to specify what goals the team is working for and detail the resources team members can draw from. Lastly, align team goals with the mission of the organization.

Need a refresher on managing? Do you have team leads or supervisors that could benefit from a basic class on managing people? Best Care EAP can help! We've added 2 new sessions for 2019 – Change Management and Identifying/Preventing Compassion Fatigue, here are the upcoming dates, but classes do run all year long:

MANAGEMENT BOOT CAMP	Feb. 7/\$219 PP
CONFLICT RESOLUTION BOOT CAMP	March 5/\$219 PP
IDENTIFYING/PREVENTING COMPASSION FATIGUE*	Feb. 21/\$139 PP
CHANGE MANAGEMENT*	March 28/\$139 PP
DEALING W/UNACCEPTABLE EMPLOYEE BEHAVIOR*	April 11/\$139 PP

LOCATION: 9239 W. Center Road, Suite 223, Omaha, NE

TIME: *Half day 9-noon, Full day 9 am – 4 pm

Current Best Care EAP clients receive a discount on these classes. To register, call 800 801-4182 or send email eap@bestcareeap.org. For additional information, check out our website

www.bestcareeap.org.



BEST CARE
EMPLOYEE ASSISTANCE PROGRAM

Beat Exercise Excuses!!!

We all know exercise is good for us. It aids in weight control, reduces the risk of several chronic diseases, helps us sleep better and even helps relieve stress. Despite this, we have all skipped out on a workout at some point in time. While the occasional missed session is to be expected, the more frequently this happens, the harder it will be to reach your goals. So, below you will find some of the most common exercise excuses and suggestions for overcoming them, so that you can stay on track with your wellness goals.

Excuse: I'm Too Tired

It sounds counterproductive, but research has shown that exercise can actually boost energy! In fact, as little as 10 minutes can make a difference. Here are some tips for combating fatigue:

- Remind yourself of how you will feel **after** your workout: you will have more energy, feel stronger, have a sense of accomplishment and even enjoy a mood boost.
- Try exercising in the morning, before you get wiped out by a demanding day. While the best time for you to exercise is the time when you feel your best and when it is most convenient, morning exercisers tend to be more successful in sticking to their fitness regimen.
- Drink coffee or tea about an hour before you get moving – the caffeine in these drinks has been shown to boost performance. Just don't go overboard – stick to 1-2 cups.

Excuse: I'm Too Busy to Exercise

Demanding schedules can easily derail an exercise plan. However, many people who think they are too busy to exercise really do have the time, but they choose not to make it a priority. On the other hand, consistent exercisers make it part of their routine. Use these suggestions to make exercise a priority, not an option:

- It's recommended that healthy adults engage in at least 150 minutes of moderate intense aerobic activity each week. This might sound like a lot, but it breaks down to just 22 minutes a day. There are 1440 minutes in a day – can't you devote 22 to exercise?
- You don't have to exercise for an hour for it to be worth it. Ten to 15 minute bursts of exercise, done over the course of the day have been shown to be equally as beneficial as longer sessions.
- Take a look at your schedule for the upcoming week; plan exercise in your calendar and treat it like any other appointment. This way, no matter what comes up, you already have exercise worked in to your schedule.
- Consider this: a good sweat session will make you more productive, so you actually get more work done afterward. It does this by lowering your stress, clearing your head and giving you that energy boost mentioned earlier.
- Try sneaking in more activity in throughout your day. Use a pedometer and try to increase the number of steps you take each day until you hit 10,000 steps.
- Make family time active time. Playing in the park might not be traditional exercise, but if it gets you moving, then it counts. Other ideas include playing tag, going on family bike rides, or playing active video games.

Beat Exercise Excuses!!!

Excuse: I Can't Afford a Gym Membership

- Use home equipment. Try dumbbells, a stability ball, kettle bells, resistance bands, a jump rope and other inexpensive equipment.
- Buy exercise DVDs or check out free exercise videos online on websites like YouTube.com and Workoutz.com.
- Exercising outside is absolutely free! As the weather begins to warm up, take advantage of the great outdoors for your workout.

Excuse: I'm bored with my workout

Boredom is one of the major reasons people give up exercise. Beat it with these tips:

- If you've done the same routine day after day for months, it's time to try something new. Experiment with new moves, sign up for a class you've never tried, or simply switch up your current routine (example: instead of running, try cycling).
- Exercise doesn't have to be unpleasant, so find an activity you love! And remember, it doesn't have to be traditional exercise to count, the key is simply to get moving.
- Make it social: find an exercise buddy, try group exercise classes or sign up for a recreational sports league.
- Take up active hobbies: gardening, biking groups, charitable walks/races, etc.
- Exercise while watching your favorite T.V. programs. Just be sure you check your intensity and pace every few minutes so that you don't start slacking without realizing it.

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Fit for Work Manager

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