

# PERSPECTIVES

PHRA  
PITTSBURGH HUMAN RESOURCES ASSOCIATION

JANUARY  
2016

## EBAY BOOSTS PARENTAL LEAVE POLICY

eBay will dramatically increase its parental leave policy for thousands of hourly and salaried employees in the United States, joining a growing list of tech companies offering new perks to parents.

Starting Jan. 1, new moms will get up to 24 paid weeks off at 100% of their base salaries, compared with 10 weeks previously at 80% of their base pay. Male employees for the first time will be given paid parental leave, with up to 12 weeks off. The company also increased the amount of pay for people on disability or family care leave.

"These updates underscore our deep commitment to our community of employees and their ability to take the time they need with their families when it matters the most," Kristin Yetto, eBay's chief people officer, told *The Chronicle*.

After years of criticism about workplaces packed with young white and Asian males, tech companies responded by stepping up efforts to diversify their ranks. Now the companies are also ramping up programs that appeal to families, a sign the industry may be growing up.

Netflix announced in August that it would offer unlimited maternity and paternity leave within the first year a child is brought home, and Facebook plans to increase its leave for new parents who are full-time employees at its offices outside the U.S. to at least four paid months off, matching what it offers in the U.S.

"Companies are realizing it's an incredible benefit that keeps employees engaged and really happy," said Dorian Traube, an associate professor at the USC School of Social Work. "It leads to job retention. It also leads to increasing the presence of

women in the workplace."

Before eBay and PayPal split into separate companies in July, they were both part of eBay Inc. The combined company had a global staff that was 43% women, though just 24% of its technical employees were women, according to company data released in April. Despite new diversity efforts, most tech companies still have far to go for women to represent half of their technical employees.

eBay, based in San Jose, is offering more paid leave time for new parents than some tech firms. Facebook offers 16 weeks paid time off for new parents. Yahoo gives 16 paid weeks off for birth mothers and eight paid weeks off for other new parents.

Google offers up to 18 weeks paid time off for new moms. In 2007, the company made a decision to increase maternity leave to that amount from 12 weeks, said Google spokeswoman Roya Soleimani.

"After our policy change, we also found that returning moms left at half the rate they were leaving at previously," Soleimani said.

Part of the reason there's been a shift toward more generous parental benefits at tech companies could be because CEOs tend to be younger and are becoming new parents, making the issue top of mind, Traube said.

But one caveat to generous leave policies is making sure employers have a culture in which workers feel comfortable taking as much time off as they are allowed. Traube said employees look to the leaders at their companies for cues. For example, the fact that Facebook CEO Mark Zuckerberg took two months of paternity leave showed his support for the policy, Traube said.

"It starts with the leadership projecting an image that this is OK," Traube said. "It starts with the leadership sending the message that this is an important and cultural value in our company."

In addition to the parental leave policies, eBay will also update its policies on disability and family care leave. The company will offer 100% of an employee's base pay during the first 12 weeks of disability leave, and then if the leave goes beyond that, will pay employees at 80% of their base pay. In the past, employees got 80% of their base pay during disability leave.

The company is also starting a new family care leave policy, allowing employees up to 12 paid weeks off in a rolling 12-month period. The time could be taken consecutively or on a day-to-day basis.

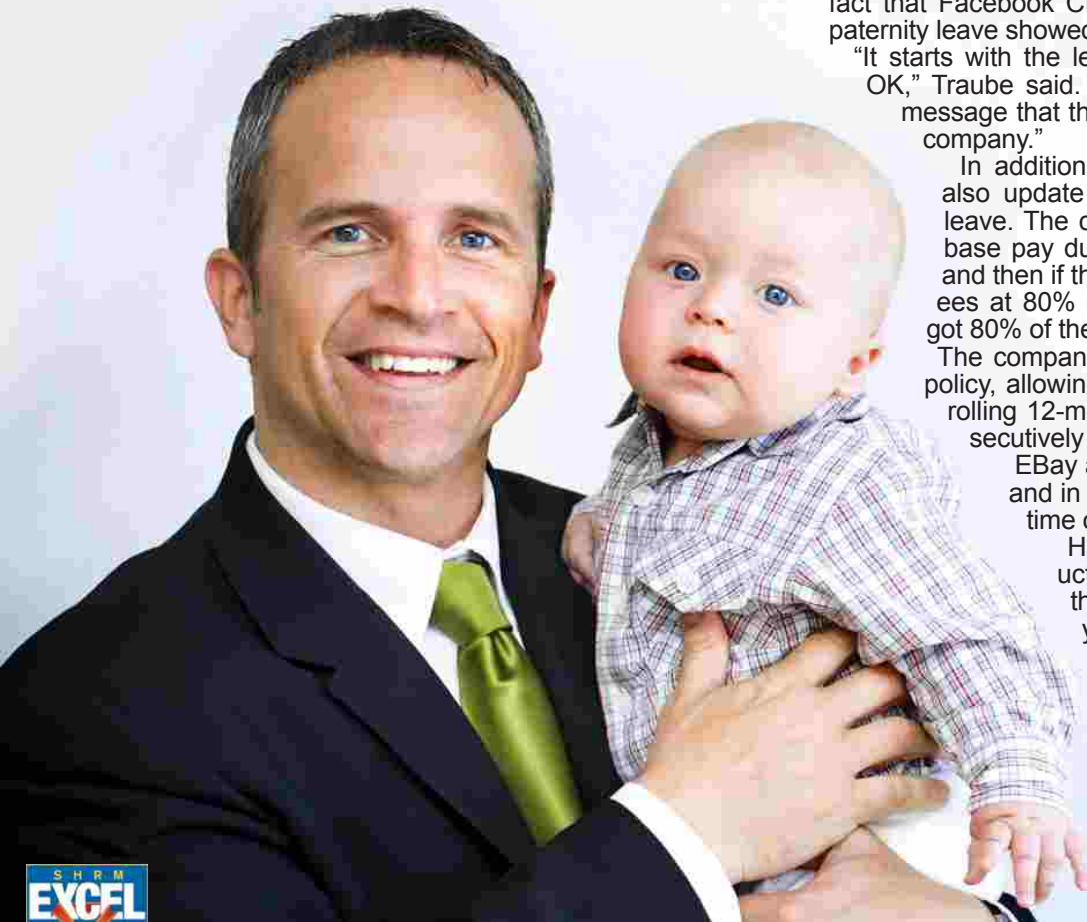
eBay also said it will examine its policies abroad, and in some countries will give two weeks of paid time off for new parents.

Helen Kottenstette, a senior director of product management at eBay, will be eligible for the updated maternity leave policy. The 36-year-old said she plans to spend the time off getting to know her yet-to-be-named baby boy and hanging out with her 18-month daughter, Isla.

"I am thrilled and proud that eBay is introducing such extensive updates to its leave policies," she said in a statement.

Wendy Lee

*San Francisco Chronicle staff writer*



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# POINT of VIEW

Jeff Dressler, President, PHRA



Dear PHRA Member,

The Pittsburgh Human Resource Association (PHRA) was founded at the turn of the twentieth century to serve the human resource profession and provide businesses with HR guidance. One hundred years after that mission was first envisioned, the PHRA continues to provide superior professional development, networking opportunities, and educational resources for its members. With a vibrant membership that is over 1,100 strong, the PHRA is the largest Society for Human Resources Management (SHRM) chapter in Pittsburgh and Pennsylvania.

In continuing the spirit of making our local human resources professionals prepared for another century via increased HR competency and strategic learning opportunities, I am pleased to announce our 2016 Board of Directors that will guide us. They are as follows:

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The PHRA has many leadership development opportunities throughout the year. If you are interested in joining a committee contact Deven Snyder [DSnyder@PittsburghHRA.org](mailto:DSnyder@PittsburghHRA.org). For a complete listing and description of our volunteer duties click here <http://www.pittsburghhra.org/?page=2>

As we wrap up a tremendous year, I want to thank you again for everything you do to make our association a success. In 2016, we look forward to continuing our work with you to develop and serve the HR professional, and advance and lead the HR profession.

My very best regards,

*Jeff Dressler*

Jeff Dressler  
Managing Director, Pittsburgh  
Coleman Search Consulting

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Perspectives is the official publication of the Pittsburgh Human Resources Association and is published bimonthly by the Editor. Articles for inclusion, inquires or comments can be mailed to Jay Lear, Editor, c/o One Gateway Center, 420 Fort Duquesne Blvd, Suite 1852, Pgh, PA 15222 or [communications@pittsburghhra.org](mailto:communications@pittsburghhra.org). For advertising inquiries call 724-787-8718. Any documents submitted become the property of PHRA.

*The ideas expressed are those of the individual writers, not the members of board of directors of the Pittsburgh Human Resources Association, and should not be viewed as legal advice.*

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# DON'T LET A GOOD HIRE GO BAD

“How can I stop hiring problematic employees?”

This is a very common question that tends to follow a Workers' Compensation claim “going bad,” and you never saw it coming.

Frustration doesn't begin to describe your feelings. You go through all the necessary steps to find the “ideal” employee, who has the skills, education, focus and attitude to be able to complete their job with high efficiency and do it safely. You believe they are going to understand their job duties, that they are responsible, and that they can accomplish their duties without constant supervision. You feel like you've just won the HR Lottery... until you realize you've misread one of the numbers on the ticket.

You look back and try to figure out where it all went wrong. It still looks like the candidate passed all your tests. It looked like the perfect fit, but something went wrong.

Most likely, you threw them to the wolves too soon. We see many good hires go bad for the simple fact the company does not conduct a proper orientation in order to indoctrinate the employee into their safety culture immediately. The steps are quite simple:

**Orientation** – Begin indoctrinating employees through a proper orientation program, which is not just about the history of your company, paperwork, and meeting everyone; it should be much more.

**Safety** begins at the point of hire, so your orientation also needs to start with and continually emphasize safety. OSHA requires you to provide certain trainings to new employees before they actually start, such as hazard communication, but the process should go beyond this. New employees must understand the culture of your organization in order to do their job safely, not just productively. They need to understand that you have a “zero-injury culture,” that no job is important enough to lose life or limb, and that accidents don't “just happen.” The orientation needs to convey that the employee is responsible for themselves and their team, and that everyone is working in a safe environment.

Immediately after completing the Employment Eligibility Verification Form I-9, you should conduct the new

employee's safety orientation. Employees need to go through appropriate safety training before they even set foot on the job. This will elevate the goal of working efficiently and safely to being the main priority. Many employers make the mistake of waiting for the next safety meeting, or the next safety training session to start the process. This can be a month, two months, even six months away, depending on how often the company conducts trainings. It's like handing someone the keys to a Formula-1 race car before they know how to drive.

Orientation should also emphasize the culture of your organization, the employee's expectations, and what you expect them to do and how to do it. Educate them on who to report to, what should be the chain of command, what should they be striving for and achieving, and how often you will conduct performance reviews. It should also spell out the process of reporting any issues they identify--immediately.

**Post Orientation** – Is it any surprise there is a higher percentage of new employees injured in the first six months compared to those working in the position longer than six months?

After you conduct your orientation, it is critical to train employees for any skill gap they have that relates to their job. Many employers make the mistake of providing a quick “on-the-job training,” or letting the employee learn as they go, without a clear process of delivering the training and measuring the employee's progress. The quicker you close the employee's skill gap, the quicker they will be safe and productive for you. When you start an employee in their position, or move an employee to a new position, train them for that specific job, rather than showing them once or twice how to do something or simply tossing them a manual, before leaving them on their own. Consider starting a mentoring program instead, where a more experienced employee, one that does things the proper way, is able to monitor and make sure the new employee:

1. Conducts their tasks properly and safely,
  2. Does not slip into any bad habits that will be more difficult to break later on,
  3. Does not have any skill gaps that need to be addressed.
- The mentor does his or her part by:
1. Working with the new employee for a period of time,
  2. Being responsible for monitoring and making sure the employee knows what they are doing,
  3. Assessing if the employee is conducting the job safely and correctly,
  4. Acting as a sounding board for the employee to ask questions while learning their new position.

The bottom line is this; the more rapidly you get employees to the point where they truly understand their job and how to conduct it, and have the necessary skills to perform it, the happier, safer and more productive your employees will be. After you reach this point, be sure to provide periodic assessments and consistent reviews of their performance. On an ongoing basis, you should identify not only the areas where you can help them improve, but also commend them for the good things they accomplish. Also, look for feedback on how they feel they or the company can improve.

You would be amazed how often your own employees will be able to identify safer and more productive ways to accomplish tasks, or have ideas on how the company can grow as a whole.

By mentoring, monitoring and retesting you can determine if you actually have an employee that needs minimum training and education to complete the tasks of the job, or one that needs a little more “heavy lifting” in order to be the employee you thought you were hiring.

By hiring a new employee, and then not training them to fill skills and education gaps, it's a Workers' Comp disaster waiting to happen. You might as well pull out the checkbook now because like death and taxes, higher premiums are surely going to happen. And this will not be the worst case scenario. That will be reserved for loss productivity, a shrinking bottom line, upset customers, and a potential loss of life on the job.

Accidents don't “just happen,” but neither do problem employees, at least not if you take the time and effort to bring them up to speed on how to do their job correctly, efficiently and, most importantly, safely. Now that's a winning ticket.

*David R. Leng*

*VP, Duncan Financial Group*

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# EMPLOYERS NOT READY TO REVOLUTIONIZE BENEFITS PLANS

Mid-to-large sized businesses are continually, but cautiously, exploring ways to manage their employee health costs without losing sight of the value those benefits represent internally and externally.

A survey from the Midwest Business Group on Health offers the latest evidence of this trend.

The organization polled 119 members, asking them to identify areas of greatest concern with respect to their benefits strategies. Those at the top:

- \* 77% want to encourage more employees to use preventive health services;

- \* 76% are looking for ways to avoid the 2018 Affordable Care Act excise tax, or Cadillac tax. But only 18% said they will trigger the Cadillac tax in 2018.

- \* 61% said managing specialty drug costs was a priority.

The main strategies for managing costs in advent of the Cadillac tax remain unchanged from other surveys: “increasing the availability of wellness programs, offering high deductible plans, adding or expanding incentives for employee wellness programs, and increasing employee cost share. Employers indicated they also plan to optimize networks for best providers and reduce benefits.”

Of less concern to these respondents:

- Centers of excellence: By 2017, 56% plan to contract directly with a center of excellence.

- Narrow networks: By 2017, 47% expect to offer narrow, high performance provider networks to their workers.

High deductible plans: By 2017, 54% of employers will offer high deductible plans. “Employers still believe HMOs and PPOs will remain viable because they want to support employees that are in lower salary tiers,” MBGH commented.

Private exchanges: 21% said they will consider off-loading their employees to private exchanges for health insurance. Going forward, MBGH noted, an increasing number said they will consider this option.

Outcomes-based incentives: 50% of self-insured employers identified outcomes-based incentives as a priority.

Cost-sharing with employees: 80% said they had not yet determined if they will increase benefits cost sharing by 2017, and, MBGH said, “and 21% have indicated they plan to remain at 70/30, with only 6% moving to a higher cost share of 50/50.”

Telemedicine: 46% cited this as a current priority for increasing access and reducing unnecessary absences in order to get care.

“To ensure they are getting the most value for their health care dollars, employers are implementing a number of key strategies to manage their company’s health benefits and taking steps to encourage their employees to better manage their health,” said Larry Boress, MBGH president and CEO. “The business community continues to believe health care benefits are an investment in their human capital, and they’re seeking effective and innovative approaches to deal with their largest expense outside of payroll.”

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## PREPARING FOR WORKPLACE VIOLENCE

In many industries it is common for employees to carry weapons in violation of their company policy. For example, field insurance investigators and truck drivers are two groups of employees who commonly feel better protected with firearms in remote, unfamiliar and potentially dangerous working environments. Debates about gun control rage on as the media publicized that there have been, on average, about one mass shooting for each day in 2015. We often write about the value of electronic policy, forms and training distribution for regulatory compliance, but I want to share tips on how these systems are used to prepare for Emergency Response, Workplace Violence and Active Shooter scenarios.

### 4 Steps We Are Seeing From The Best Companies:

#### 1 – Clear Policies, Guidelines and Training

Communicate clear policies to employees, clients, vendors and visitors outlining your expectations for a violence free workplace. Provide updated training and guidelines to all employees to boost awareness of the dangerous warning signs to prevent an incident, as well as know the emergency action plan if something happens. Re-issue the policies and training periodically so the information is fresh. Practice your escape plan that includes how to block the door, where and when to run for shelter, and how to act like you were already shot. It is critical to have an efficient and agile framework that communicates content to all employees, documents and tracks their training, and remains updated with current content.

There are many expert sources of content from attorneys to

consultants. A host of free material specific to workplace violence is also available from OSHA <https://www.osha.gov/SLTC/workplaceviolence/>. The city of Houston recently released a YouTube video to help employees survive an active shooter incident: <https://youtu.be/5VcSweju2D0Sweju2>

#### 2 – Physical Design

I am sure this is an area that will be researched better as architects design workplaces and furniture to minimize the impact of an active shooter. Light your dark, isolated parking lots and outside areas. Consider installing cameras and alarm systems throughout the premise. Communicate escape routes and emergency action plans from every angle.

#### 3 – Enforcement

According to OSHA, almost 2 million American workers report being victims of workplace violence each year. Have a clear and easy mechanism for reporting violations of policies. Your handbooks are brought to life when the words turn into actions. Investigate every violation and complaint, confidentially. Follow through with discipline, even if it means firing your best salesperson. Make employees accountable for their actions and let them know your company has a zero tolerance policy for harassment, intimidation and workplace violence. Document every action taken in efficient and agile framework.

#### 4 – Strong HR

Strengthen your stable of employees when they are still in the pre-hire process by performing thorough pre-employment screening. Onboard employees into a culture of compliance, transparency, respect and accountability by communicating expectations, policies, guidelines and training. Give employees the tools they need to recognize danger at home and at work. Strengthen your connection with your workforce.

*Nick Goodell*

*Founder, HR Resource Force*



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# STAFFING AGENCY WORKERS & ACA OFFERS OF COVERAGE EMPLOYEE BENEFIT PLAN REVIEW

The final regulations on the Affordable Care Act's (ACA) "pay or play" rules were released on February 10, 2014. Under the rules, there are potential penalties imposed on large employers that do not offer substantially all full-time employees coverage that qualifies as affordable and minimum value. In determining who is a full-time employee of an employer under the ACA rules, the Internal Revenue Service (IRS) has indicated that it intends to use a fact-based "common law" definition of employee. Thus, an employer must be careful to analyze the facts and determine who is an employee for IRS purposes in order to be certain to make an appropriate offer of coverage and thereby avoid potential penalties. When an employer uses a staffing agency to supply workers, making the determination as to who is a common law employee becomes potentially more complex. However, the final rules allow for some relief for an employer who might otherwise incur the pay-or-play penalties with respect to workers hired through staffing agencies that are reclassified by the IRS as common law employees of the client employer. The requirements for obtaining this relief are addressed below.

## BACKGROUND

### Common Law Employee Determination

Under the "play or pay" rules of the ACA, an employer who fails to make an offer of coverage to 95% of its full-time employees in 2016 will be liable for a penalty if a single one of its employees obtains coverage on the exchange and receives a premium subsidy. The amount of the penalty for the year can be significant: \$2,084 multiplied by the total number of full-time employees (after a reduction of up to 30 employees). An employer who offers coverage to the required percentage of employees may owe a penalty if the coverage offered is either not affordable or fails to provide sufficient value. The penalty is \$3,126 for each employee who obtains coverage from the exchange and receives a premium subsidy. Given these potential stakes, it has become even more important to determine who is an employee.

For IRS purposes, an "employee" means a common law employee of the employer. Generally, a worker providing

services to an employer is a common law employee if the employer has the authority to direct and control the manner in which services will be performed. The IRS states on its Web site:

Under common-law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.

The IRS sets forth three main categories of facts that it will consider to determine whether a person providing services is a common law employee or an independent contractor:

- (1) behavioral control;
- (2) financial control; and
- (3) facts about the relationship.

No one factor is determinative, nor is there a set number of facts that will cause an automatic determination as to employee or contractor status. In light of this, when making a determination a company, should look at the full relationship, the degree or extent of control, and direction and should be certain to document the facts used to support it arriving at a conclusion.

### STAFFING AGENCY USE

Many companies contract with staffing agencies to provide workers in a variety of situations. In many of these contracts, the workers are often characterized as employees of the staffing agency or jointly employed by the staffing agency and the company client. The IRS has indicated the terms used by the parties to such a contract are only one of many facts that will be examined to determine who is the common law employer for ACA purposes.

### ACA STAFFING AGENCY RULES— OFFERS OF COVERAGE

An employer who has authority over workers supplied by a staffing agency may be at risk for having those workers characterized as its employees for purposes of the play-or-pay rules. Because employers do not offer health coverage to workers supplied by staffing agencies, classification of these workers as common law employees could trigger liability for the ACA penalties. For example, an employer who offers coverage to 96 out of 100 full-time employees would not owe a penalty under the 95% rule. But if five workers provided by a staffing

agency are later determined to actually be common law employees of the employer, the employer could owe a penalty of \$156,300 (\$2,084 multiplied by 75, which is the number of full-time employees less 30).

The final regulations under the pay-or-play rules permit an employer to take credit for an offer of coverage made by a staffing agency, but only if the employer pays the staffing agency more for a worker who accepts the offer of coverage than the employer would pay if the worker did not accept the offer of coverage. The typical staffing agency contract prior to the enactment of the final regulations contained no such provision for distinguishing offers of coverage. The contracts were considered to spread the cost of any benefits among all the workers used under the contract, as opposed to distinguishing them. Because this is a new provision for many contracts, it is important to make certain your contracting team understands the importance of providing for a distinct coverage line item.

### ACA REPORTING CONSIDERATIONS FOR STAFFING AGENCY OFFERS

Although the rules allow an employer to take credit for an offer of coverage from a staffing agency for purposes of avoiding the ACA pay-or-play penalties, there may still be potential concerns under the reporting requirements if the workers are recharacterized. A third party can fill out the forms for an employer; however, if an individual turns out to be an employee of a client there will potentially be Forms 1094 and 1095 that are incorrect. There may be penalties associated with filing such incorrect forms.

### CONCLUSION

Employers who make use of a staffing agency will want to carefully consider the risk that workers provided by staffing agencies could be characterized as the employer's common law employees. If there is a risk, the employer will want to consider how many staffing agency workers typically are part of the workforce to determine whether ACA penalties may be triggered. Finally, an employer at risk will want to review and, if necessary, amend its agreements with staffing agencies to take advantage of the protection offered by the final regulations.

*Mark S. Weisberg with Linda Hoseman  
Thompson Coburn LLP*

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## January 12 EEOC Review

Webinar or PHRA Office  
12:00 p.m. – 1:00 p.m.  
HRCI & SHRM Credits

## January 15 Managing Abrasive Behavior

PHRA Office  
8:00 a.m. – 4:00 p.m.  
HRCI & SHRM Credits

## January 19 Developing & Leveraging the “Business” of HR

Gateway Two  
8:00 a.m. – 12:00 p.m.  
HRCI (Strategic) & SHRM Credits

## January 25 Spring 2016 SHRM-CP & SHRM-SCP Prep Class

PHRA Office  
12 Weeks, 6:00 p.m. – 9:00 p.m. on  
Mondays

## February 11 Employment Law Update

PHRA Office  
8:00 a.m. – 10:00 p.m.  
HRCI & SHRM Credits

## February 24 Meet Your PHRA Colleagues

Mad Mex Robinson  
5:00 p.m. – 8:00 a.m.  
April 20  
Engaging Pittsburgh Awards  
Celebration  
Sheraton at Station Square  
5:00 p.m. – 9:00 p.m.

## June 3 Golf & Bocce Outing

8:00 a.m. – 2:30 p.m.  
Montour Heights Country Club

## Stay tuned as we plan our 2016 Event Calendar! You can look forward to:

- One-day conferences
- Webinars
- An array of in-person Learning & Professional development workshops
- Networking events
- HR Certification preparation opportunities
- Community service events
- PHRA Holiday Party
- And so much more!

# FIND YOUR FOCUS IN 2016

## 1. Fire Bad Customers

We tell children to treat others in the way they want to be treated and this holds true in the business world as well. If the giving is one way, then get out. Set clear schedules and boundaries with customers to assure the relationship is mutually beneficial. Do not waste your time endlessly trying to please someone that will never be satisfied or profitable.

## 2. Get More Done In Less Time

Time is money. Don't spend time over analyzing, micromanaging employees, in drawn out meetings, long e-mails, and distracting phone calls. Put a time limit on each event (1 minute e-mail response, 45 minute meeting)

## 3. Acknowledge Your Procrastinator

Follow the 80/20 rule; 20% of your top activities that trigger you to procrastinate are the very activities that will yield your highest results. So, listen to your procrastinating thoughts. What items on your to do list push you towards watering plants or deleting old e-mails? Whatever items produce the most reluctance are likely the very ones you should jump in and do. Use technology tools to automate inefficient administrative tasks. Eliminate chasing employees with documents, forms and files.

## 4. Don't Break The Chain

Consistently drive towards towards one goal. It does not matter if each day, each task, or each process is perfect. It only matters that each activity is bringing you one step closer to your goal. The solidity of your consistent actions will alone increase your productivity.

*Kristen Goodell  
HR Resource Force*

# ON THE MOVE

Congratulations to the following PHRA members on recently achieving a new HR certification:

**Lauren Clair, PHR**, Pressley Ridge  
**Maria Farneth, PHR**, CONSOL Energy, Inc.  
**Cortney Rech, PHR**, Asbury Heights