PERSPECTIVES

NOVEMBER 2016

PHRA
PITTSBURGH HUMAN RESOURCES ASSOCIATION

AFFILIATE OF SHRM
SOCIETY FOR HUMAN RESOURCE MANAGEMENT

POINT OF VIEW

Jeff Dressler, President, PHRA

Dear PHRA Members,

It is hard to believe that my term as President of the PHRA is coming to a close. I am truly honored to have served for the last year and a half. During this time I have constantly been in awe by all of you that have given of your time and energy selflessly in support of our PHRA Vision.

We began the year with an aggressive list of things to accomplish and I'm proud to say we delivered on them all. A special thanks goes out to our Committee Chairs, Directors and Staff for all of their hard work and dedication as we put our plan in place and worked the plan throughout the year. I believe the PHRA, through our collective performance this year, has taken another strong step in the journey to better serving the Pittsburgh HR community.

Here are some of the 2016 Highlights:

- Our most recent event, the **68th Annual Conference & Exhibition**, was one of the largest conferences we have planned in many years. It was an incredible 2 days with close to 500 attendees. **Click here for pictures**
- Celebrated **100 years** as a Pittsburgh HR Chapter with an **roaring 20's party!** **Click here for pictures** What a great time this was!!
- The financial strength of the association continues to be solid and show modest growth.
- Over 75 members joined our **"Moving for Mike"** Campaign, which was created to celebrate the memory of our Past President, **Michael R. Toney**.
- Held over **10 Networking Opportunities**, including our new **Membership Blitz** breakfast networking opportunities and provided **over 35 Learning & Professional Development** seminars.
- Introduced Learning & Professional Development **webinars with a live component** to provide our members access to more content.
- Engaged over **100 volunteers** throughout our Committees, Board of Directors, and Executive Committee.
- Helped over **30 members achieve their professional certification** through our SHRM CP and SCP Prep Class Series.

POINT OF VIEW

cont.

- Provided members with over **90** Recertification Credit options.
- Participated in **collaborative Community Outreach Efforts** with the Mario Lemieux Foundation, Service to Opportunity, Operation to Hire a Veteran, Homeless Children's Foundation, Free Store - PHRA Volunteer Day, Junior Achievement of Western PA, Family House, New Century Careers – Nuts & Bolts of Hiring Re-Entrants, Imagine Careers, and Power of Woman.

All of this was possible thanks to our Staff, Executive Committee, Board of Directors, Committee Chairs & Members, Volunteers, Business Partners, and members-at-large.

It has been a privilege and honor to serve as your President and I look forward to celebrating all of our 2016 accomplishments together at our Brand Launch and Holiday Party on December 8th.

As you know our theme for the year has been to **Honor the Past** (as we did with our 100 year celebration), **Treasure the Present** (2016 Accomplishments), and **Shape the Future** (Brand Launch Party). I hope you took part in "shaping our future" and voted on your favorite logo. The evening will include drinks, hors d' ocuvres, dinner, deserts and a live DJ.

I hope to see each of your there helping celebrate our PHRA! Please dress fabulously and join us as we celebrate our future!!

Warmest wishes,

Jeff Dressler
PHRA President

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Launch Party!

PLEASE JOIN US AS WE UNVEIL OUR

NEW PHRA BRAND

Come celebrate the holidays and our Brand Launch! Includes a drink ticket, hor d'oeuvres, dinner, desserts, live DJ & raffles.
Please dress fabulously.

12.8.16 | 5-9PM | THURSDAY
DOUBLETREE - GREEN TREE

A DIFFERENT APPROACH TO BENEFITS ADMINISTRATION TECHNOLOGY

BenefitsPro

Human resources (HR) professionals around the nation are gearing up for open enrollment. This is when the true nature of their profession is expressed. HR is responsible for consulting with benefits advisors, partnering with carriers to obtain insurance products, solidifying employee benefit offerings and eligibility, distributing employee communications — the list of tasks and duties is exhaustive. Furthermore, during and following open enrollment, HR must manage and verify employees' EOI documentation, dependents and beneficiaries, as well as handle the billing and reporting to carriers, payroll, and third party vendors.

To combat the extensive HR duties associated with employee benefits administration, employers are implementing enrollment and administration applications that automate many HR tasks, but also offer employees an easy benefits enrollment process. In fact, many employers rely on online enrollment interfaces to deliver employee communications and benefits information to employees in an effort to increase employee benefits education and participation.

Because we live in a digital age, the concern for an enhanced user experience is at the top of mind of employers who are in the market for a benefits administration system. What does the employee interface look like? Are there interactive elements? How is information presented to employees? These are common questions employers ask benefits administration vendors.

A focus shift

The interest in an enhanced user experience is important; however, employers are off target in regards to benefits administration technology. Visual information, data placement and aesthetics are all subjective components to a user experience, which is aside from the fact that employees spend a miniscule amount of time interacting with their benefits enrollment system in comparison to their HR department.

Employers must redirect their focus to the functionality and capabilities of their employee benefits administration technology, because the benefits administration features and services offered are what truly harness the talent and effectiveness of their HR department.

The different approach

How many times a year do employees actually need to or desire to interact with their benefits? Perhaps a few days during open enrollment and a handful of other times due to qualifying life events or to simply find out what their benefits are.

Human resources, on the flip-side, interact with their employees' benefits and third parties (such as carriers and payroll) on nearly a daily basis—roughly 360 days a year. Human resources administrators require a robust, flexible benefits administration solution that will accommodate their unique employee benefits plans, carriers, payroll vendor, and manage employee enrollment, eligibility, dependents, beneficiaries, communications, and more.

A DIFFERENT APPROACH TO BENEFITS ADMINISTRATION TECHNOLOGY (CONT).

A better approach to benefits administration technology attends to the challenges and tasks HR professionals are faced with nearly every day and emphasizes the need for a comprehensive technological solution.

Steve Herman, National Director of Sales at Web Benefits Design, has crafted a different philosophy from his years in the employee benefits technology space, his thousands of conversations with HR professionals, and his understanding of the significance of a pragmatic technological solution to employers' benefits administration challenges.

HR professionals are constantly being challenged with more and more administrative and compliance duties. Now faced with ACA compliance, COBRA, and HIPPA regulations, they require a secure, unified data management system to track and store their employee benefits and eligibility data, as well as integrate administrative, communications, workflows, billing, and reporting functionalities.

Many versions of benefits administration software lack in administrative functionality, data management, and workflow capabilities, but include an attractive employee visual interface.

"Benefits administration is all about unparalleled access to data reports and employee transactional records, employee communications, COBRA administration, and now ACA reporting," says Herman.

Employers must shift the focus from the employee user experience to the human resources platform functionalities and administrative tools. A benefits application may be visually pleasing and contain interactive elements, but if the backend HR system features are limited in functionality, it is not a practical or useful technology.

It is not the employee user experience that is going to drive employee participation and education, reduce administrative costs, and optimize the human resources role. It is the ability to leverage technology to handle the time-consuming, manual, data-intensive tasks that are required of HR.

"Employee benefits administration is an everyday reality for an HR professional, but is merely an annual experience for an employee, "says Herman. "While acknowledging that the employee and consumer experience is important, and there is a need for ease of use and support when making decisions, it should not be the core focus."

http://www.benefitspro.com/

RECENT COURT DECISION ON WELLNESS PROGRAM HAS MIXED RESULTS

Arthur J. Gallagher & Co.

A September 2016 ruling issued by the Eastern District Court of Wisconsin in the case of in E.E.O.C. v. Orion Energy Systems, Inc. provides mixed results for employers and the Equal Employment Opportunity Commission ("EEOC"). The district court sided with the employer finding that the employer's wellness program was voluntary, but agreed with the EEOC that the bona fide benefit plan safe harbor under the Americans with Disabilities Act ("ADA") does not apply to the employer's wellness program.

Background

The ADA generally prohibits employers from making disability-related inquires or requiring medical examinations from employees with very limited exceptions. Two of those exceptions were the subject of this court case: (1) an employer may make disability-related inquiries and/or require medical exams if they are part of a wellness program that is voluntary; and (2) a bona fide benefits plan is permitted to use disability-related inquiries and/or medical exams to underwrite, classify, or administer risks (often called the ADA "bona fide benefit safe harbor").

In 2009, the employer in this case had a wellness program that used a health risk assessment ("HRA"). The HRA required completion of a health history questionnaire and biometric screening that included a blood draw plus checks on blood pressure, height, weight, and a body circumference measurement. The employer did not receive any personally identifiable information from the HRA. The questionnaires and blood samples were collected by outside vendors that provided only aggregated information in an anonymous format to the employer. Employees who did not complete the HRA were able to participate in the employer's medical plan, but were required to pay the full monthly cost of coverage which ranged from $413 for single coverage to $1,130 for family coverage. The employee who declined to complete the HRA was required to pay 100% for her coverage.

The EEOC sued the employer asserting that the employer's wellness program was not "voluntary" and that the ADA's bona fide benefit plan safe harbor is not available for wellness programs. The employer asserted that the wellness program was voluntary because an employee could refuse to complete the HRA and still be covered under the medical program. The employer also argued that ADA's safe harbor does apply to wellness programs and pointed to other court decisions (the 11th Circuit Court of Appeals in August 2012 and the Western District Court of Wisconsin in December 2015) on other employers' wellness programs to support their position.

The Court's Ruling

This district court ruled that the employer's plan was voluntary even though the penalty for not completing the HRA was that the employee must pay 100% of the cost of coverage. The Court noted that Congress did not define what constitutes a "voluntary" medical exam or inquiry, and that even a strong incentive is still an incentive, not a compulsion. The Court commented that the employee in this case had a "hard" choice, but she did have a choice. It is important to note, however, that this case concerns a 2009 wellness program. The EEOC's proposed regulations on the application of ADA to wellness programs were not issued until 2015 with final regulations published in May 2016. Under the 2016 final regulations, medical exams and disability-related inquiries are generally voluntary if the employer does not: (1) require employees to participate; (2) deny coverage under group health plan (or option) to employees for non-

participation; and (3) take any adverse action, retaliate against, or coerce employees who choose not to participate. If an employer uses incentives, the maximum incentive is limited to 30% of the total cost of self-only coverage.[1] However, as the Court noted, the EEOC's final regulations do not apply the 30% maximum on a retroactive basis; the 30% limit applies to plan years that begin on or after January 1, 2017. As a result, even though the Court ruled in favor of the employer on the voluntary exception in this case, the Court's determination that the program was voluntary applies to the employer's 2009 wellness program (the employer re-designed its wellness program prior to the 2015 proposed regulations).

In contrast, the Court agreed with the EEOC that ADA's bona fide benefit safe harbor is not available to wellness programs. The Court rejected the reasoning adopted by other courts concerning the availability of the ADA's safe harbor. The Orion Court's opinion is that the ADA's bona fide benefit plan safe harbor is a limited exception that was intended to enable insurers to use basic underwriting and risk classification. The Court determined that Orion's wellness program was not used to underwrite, classify, or administer risk.

The Court also commented that the ADA is ambiguous on the question of the application of the bona fide benefit plan safe harbor to a wellness program, and that where a statute is ambiguous reasonable interpretations by regulators should be upheld. The Court also stated that "[i] n this case, the EEOC's interpretation is reasonable." Unlike the maximum incentive in the EEOC's May 2016 final regulations, which is not effective until 2017, the EEOC states that other portions of the final regulations – including its position on the safe harbor – merely clarify prior regulations and as a result apply retroactively.

Impact on Employer Wellness Programs

Although the Court ruled in favor of the employer by holding that its wellness program was voluntary even with a substantial penalty, the decision relates to the employer's 2009 wellness program. Now that the EEOC has formally defined "voluntary" in final regulations it is less likely that this Court (or other courts) would consider a program that includes incentives greater than 30% to be voluntary.

Because of a split in court decisions on the bona fide benefit safe harbor issue, there may be additional litigation to ultimately resolve the question of how the safe harbor applies. Given that the EEOC has now defined "voluntary," it will probably be more difficult for an employer to prevail in court with a wellness program that does not comply with the final regulations. In the interim, it would be prudent for employers to design wellness programs that adhere to the EEOC's final regulations (as well as other applicable regulations). An employer wishing to design a program that falls outside the scope of what is permissible under final regulations should seek advice from an attorney with experience in this area when designing a wellness program.

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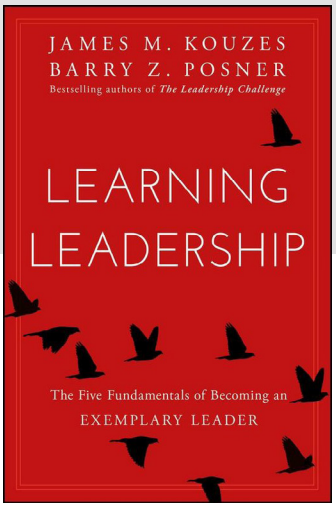
[1] The EEOC's final regulations are more complex and include additional requirements such as confidentiality. More information about the EEOC's final ADA regulations applicable to employer-sponsored wellness programs is contained in our Technical Bulletin "EEOC Issues Final Wellness Rules under ADA and GINA" **(click here for a copy)**.



BOOK REVIEW

LEARNING LEADERSHIP: THE FIVE FUNDAMENTALS OF BECOMING AN EXEMPLARY LEADER

Reviewed by Rosanne C. Saunders, J.D., SPHR, SHRM-SCP, rsaunders@consulthrcs.com

For years the following phrases were taped to my desk blotter: "Model the Way; Inspire a Shared Vision; Challenge the Process; Enable Others to Act; Encourage the Heart". These are the Five Practices of Exemplary Leadership ® and formed the foundation of an in-house leadership development curriculum at the health system where I worked in the 1990s. I found daily inspiration and concrete guidance in these dozen words and they shaped the way I understand how effective leaders work.

James Kouzes and Barry Posner are scholars of leadership; their best-known and best-selling book, The Leadership Challenge, was first published in 1987 and is now in its fifth edition. They have authored many other books and articles on leadership and are renowned speakers and consultants on the topic that is the focus of their academic research and professional lives.

Their newest book, Learning Leadership, was just released this year. The authors begin by describing a current leadership shortage and pipeline that is inadequate to meet the needs of institutions of all kinds. They attribute it to three factors: demographics, insufficient training/experiences and prevailing mindsets. Millennials are overtaking the workplace and transitioning into supervisory roles, often with little or no training. We have all likely observed the dearth of investments in leadership development, with initiatives that are inconsistent, under resourced and generally deficient. This is coupled with a reluctance of individuals already in leadership positions to see themselves as leaders who can be developed and grown into more effective ones.

This book is based on the premise that "learning is the master skill". Can anyone learn to be a (better) leader? Yes, say the authors, by believing you can and working at it. So learning as a continuous process of engagement and discipline is essential. One of the core recommendations, based on sound behavioral and management research is to keep a leadership journal. By using it to set goals, reflect on progress, document activities and reinforce values, the journal is living documentation of learning.

Divided into seven parts, Leaning Leadership first examines what we know about effective leaders, including a review of the Five Practices noted above. The following five parts describe five fundamentals essential to skill development and the final part is a call to action and to be "positive, energetic and hopeful". In addition to Belief, these fundamentals involve Aspiration, Challenge, Support and Practice. Each chapter ends with a Key Message summarizing the chapter in a few sentences and a Self-Coaching Action, an assignment designed to build a fundamental skill.

Kouzes and Posner write in a style that is adult, direct, values-based and remarkably jargon-free. Their work is enduring because it is well-researched and not based on the latest fad or catch phrase.

This book is best approached and digested in small pieces over a period of time. I do not recommend it as vacation reading because it is a call to action. This is not a book to read for content and place on a bookshelf for later reference or pull out when you need a pithy motivational quote. It is a serious book for a serious student of leadership who is willing to work to get better; it would be a great gift to a newly-appointed leader.

TEN THINGS EMPLOYERS CAN LEARN FROM RECENT FMLA SUITS

CCH, Incorporated

Even decades after the Family and Medical Leave Act (FMLA) was enacted, employers are still making basic mistakes, such as presuming that an employee who wants FMLA leave has to use the word "FMLA," failing to properly calculate FMLA allotment or use, and disparaging those who take leave. Perhaps managers find some provisions unclear or simply need a refresher. Along those lines, here are 10 "takeaways" from recent court decisions over alleged FMLA mistakes.

1. When calculating FMLA entitlement, include overtime and "working lunches." An employee's actual workweek is the basis for determining FMLA leave entitlement. This means overtime and breaks that were spent working must be included when calculating an employee's FMLA entitlement. In one recent case, the Eighth Circuit held that, although a tire manufacturing employee had the choice of whether to put his name down for certain overtime shifts, the overtime became mandatory once he did that and was selected for a shift, so the overtime should have been included in calculating his allotment of FMLA leave for the year. Given that his overtime hours varied from week to week, the employer should have calculated his leave in accordance with 29 C.F.R. §825.205(b)(3). Instead, the overtime hours were not considered at all. His FMLA interference claim would therefore go to trial.

In another case, a corrections department counselor claimed understaffing kept him from eating in the employee lunchroom and he had to eat where inmates congregated. This, ruled a federal court in Illinois, raised a question on whether his lunches were spent predominantly benefitting his employer and should have been included in calculating whether he met the 1,250-hour requirement. Also at issue was whether the employer knew of his working lunches: 29 C.F.R. §785.11 states that unrequested work is work time if the employer "suffer[s] or permit[s]" the work and "knows or has reason to believe" the employee is working.

2. In calculating amount of leave used—don't include days an employee is not scheduled. Be careful in calculating how much FMLA leave has been used—FMLA leave may be taken in periods of weeks, days, hours, and sometimes less than an hour. The employer must allow employees to use FMLA leave in the smallest increment it allows for other forms of leave, as long as it is no more than one hour. When calculating the amount of leave used, exclude days an employee would not be working (e.g., weekends, temporary plant closures, holidays).

One employer faces trial for including weekends in calculating an employee's FMLA usage (she worked Monday through Friday) and firing her when it thought her leave was used up. The company thought it was "simple math" that her periods of leave in 2013 totaled 12 weeks (84 days) as of December 15, but a federal court in Tennessee disagreed. Weekends were not to be counted, so the total was 60 days and she had not exhausted her FMLA leave by December 15. Also rejected was the employer's argument that the plant closes for the holidays so she would have soon exhausted her leave anyway. "If the employee is not scheduled to report for work, the time period involved may not be counted as FMLA leave," the court noted, quoting the DOL's response in the Federal Register to a comment.

3. Neither a medical emergency nor a request using the word "FMLA" is required. One employee won summary judgment as to her employer's liability for FMLA interference after a federal court in Pennsylvania rejected the employer's argument that FMLA leave is limited to medical emergencies. The court found it undisputed her parents had a serious health condition and she was entitled to family care type leave to make arrangements for their transition in care. It also found that her need for leave was unforeseeable and she was only required to give notice as soon as practicable—it was enough that she said her "dad was ill, and she had to get the house ready for him to come home" from the

"hospital." If the employer wanted more information on her parents' health, it could have asked.

As to notice of the employee's own health condition and need for leave, if there is a known history and the employee shows symptoms at work, that could be enough under the FMLA. It is up to the employer to learn more. For example, an employee with a history of migraines avoided summary judgment after a federal court in Missouri found that a sick log stating she was absent for "headache" may have triggered the employer's duty to investigate; instead, it fired her under its attendance policy. In another case, a truck driver receiving treatment for high blood pressure had chest pains and, believing he might be having a heart attack, asked a coworker to tell the manager he was leaving. He was considered a "voluntary quit" since he failed to notify the manager himself, but a federal court in Maryland found triable issues on whether he provided sufficient notice of the need for FMLA leave.

4. Give employees a chance to provide certification. Employers may require employees to provide a medical certification of the need for FMLA leave, but lawsuits often arise if the certification is found deficient. The Second Circuit recently revived an employee's FMLA claims against an employer and an HR director responsible for a communication breakdown that led to the employee's discharge. The employee provided certification that she needed to care for her son who was hospitalized with diabetes. After he broke his leg, she sent a new FMLA request for leave through July 9 and repeatedly asked if more information was needed. She heard nothing until she received a July 17 letter stating her paperwork did not justify her absences. She sent emails asking what "paperwork" was needed, but the HR director simply sent a DOL brochure and refused to let her return absent proper documentation. She was fired for job abandonment. To the appeals court, a jury could find the employee made good faith efforts and was thus relieved of her duty to provide certification.

In a case out of Illinois, a staffing agency was denied summary judgment on an FMLA interference claim because it fired the employee one day after requesting her medical certification. An employer may deny leave absent timely certification, explained the federal court, but 29 C.F.R. §825.305(b) defines timeliness to be 15 calendar days from the request for certification. It also requires the employer to warn the employee in writing of the consequences of failing to timely return a certification, and that was not done here.

5. Communicate with employees. As indicated by the HR director's inadequate responses to an employee's questions in the Second Circuit case above, it is important to keep a dialogue with employees who request information about their FMLA obligations. It is also important to communicate regarding their job status or what they can expect to change due to their absence. For example, a federal court in Arizona held an employer liable for liquidated damages under the FMLA because it failed to answer a pregnant sales rep's questions about how her accounts and commissions would be handled during her maternity leave. By not responding to repeated inquiries over seven months, the company essentially forced her to guess as to the professional consequences she would suffer in terms of lost commissions and transferred accounts, reflecting a lack of good faith and willful indifference to the FMLA.

6. You can require the use of customary notice procedures for absences, but with caveats. Cases regularly crop up where employees have been denied leave or disciplined for not following call-in procedures for potentially FMLA-qualifying absences. Employers need to consider if the need for leave was unforeseeable. If it was unforeseeable, employees need only provide notice of the need for FMLA leave "as soon as practicable," though employers may

generally require them to follow normal call-in procedures. In one case, an employee's bipolar medication interfered with sleep and she overslept, failing to call in an absence before her morning shift. In the opinion of a federal court in Kansas, a jury could find that calling in late was "as soon as practicable" and that the employer interfered with FMLA rights by firing her for tardiness and absences.

In other cases, where employees have no excuse for failing to follow call-in procedures, their FMLA claims usually fail. For example, a Michigan welder had his FMLA claim tossed because he had no good reason for not calling in his late arrival. The federal court found that his deposition testimony providing only "conjectural justifications" such as he was probably suffering an anxiety attack at the time, were not enough to avoid summary judgment. The result was the same for a Delta flight attendant based in Utah who was fired for violating airline policy by accepting an assignment and then canceling without sufficient notice.

7. Avoid derogatory remarks about those who take leave. If there's one thing that's going to make a plaintiff's case easier in proving unlawful intent, it is a manager's or decisionmaker's derogatory remarks about a statutorily protected activity. In one case from a federal court in Indiana, an employee was previously disciplined for excessive absences and was subject to a last chance agreement, but he still survived summary judgment on his FMLA claims, which were supported by his supervisor's disapproving remarks about his need for leave, including that he was on "thin ice" and was "burying himself." In a federal case out of Illinois, a car salesman who was fired 13 days after returning from FMLA leave for heart surgery won an extra $308,240 in liquidated damages on his FMLA retaliation claim after the employer failed to show it acted in good faith. Significantly, his visible heart pack was treated with open disdain by his supervisor, and he was told "don't die at the desk or I am going to drag you outside and throw you in the ditch." He was also threatened with demotion.

8. Be consistent in your treatment of employees before and after leave. A change in the way an employee is treated after FMLA leave may be considered evidence that the leave was a negative factor in any disciplinary action.

In one case, an employee claimed that as she took more FMLA leave, her new supervisor began to "watch her like a hawk," then gave her warnings for allegedly violating attendance and personal phone usage policies, eventually placing her on two performance improvement plans and firing her. This was enough, ruled a federal court in Illinois, to state a plausible FMLA retaliation claim.

In another case, a federal court in Michigan denied summary judgment based largely on evidence that an employee received a positive performance review before her FMLA leave, but afterwards was disciplined and terminated for poor performance, along with evidence that the employer skipped a step in its progressive discipline policy and created an after-the-fact paper trail documenting misconduct that purportedly occurred months earlier.

9. Adjust goals downward for employees who take FMLA leave. While it is important to be consistent in how you treat an employee before and after FMLA leave--and as compared to others, it is also important to adjust time-sensitive goals for those who take FMLA leave. For example, evidence offered by an account executive that her company didn't adjust her sales targets to account for her intermittent FMLA absences and then fired her for failing to meet her goals raised an issue for trial on whether she was actually fired for taking FMLA leave, ruled a federal district court in New Hampshire.

Similarly, a court in Tennessee denied summary judgment on FMLA claims by an employee who took intermittent leave

to care for her daughter, based in part on evidence that the employer refused to let coworkers help her meet her goals, nitpicked her work, faulted her for missing goals when she took leave, and treated similarly situated employees who missed goals better than it treated the employee.

10. Not every deviation from what you expect of a seriously ill person suggests FMLA abuse. It's one thing if an employee posts Facebook pictures of his vacation in St. Martin during FMLA leave—a federal court in Florida held that an employee who did just that failed to show he was fired for taking FMLA leave rather than for his conduct while on leave.

Usually, though, suspected FMLA abuse isn't so clear, so employers must tread carefully. In one case, a kitchen manager told his employer he was ill with blood in his stool and planned to go to the hospital or health department. Instead, he walked to a diner, had coffee, then drove home, contacting the health department the next day (he was diagnosed with colitis and diverticula and was treated for two years). Though he was fired for walking off the job, a federal court in Tennessee found triable questions on whether he gave notice of an FMLA-qualifying condition and triggered a retaliatory action.

In a case out of Maine, a long-time employee approved for intermittent leave due to chronic anxiety told his employer he was taking the rest of the day off. He ran into a coworker and they had lunch. Coworkers notified HR, which had him watched. He was suspended for "possible FMLA fraud" and then fired. The federal court held that he stated a plausible FMLA retaliation claim.

Other recent developments of note

In terms of case law, a recent ADA case bears mentioning because it highlights the confusion experienced by some employers concerning the potential overlap in their obligations under the ADA and the FMLA when an employee requests medical leave as an accommodation. In particular, it is important to note that an employee who has exhausted his or her FMLA leave may still be entitled to medical leave under the ADA. As explained by a federal court in Florida, granting the full 12 weeks of FMLA leave may not satisfy an employer's independent duty to accommodate an employee's disability under the ADA, such as through additional (though not indefinite) medical leave. Thus, the FMLA does not supplant the ADA when it comes to granting medical leave as an accommodation.

Agency developments should also be noted, including the Department of Labor's announcement of a new FMLA notice poster that employers will be required to post in their workplaces and a new employer guide designed to provide essential information on FMLA obligations. The DOL also recently issued a fact sheet on the joint employment relationship and the corresponding FMLA responsibilities of primary and secondary employers, including both an example and a chart to illustrate specific responsibilities. More information is available on the Department of Labor's website, including posters; e-Tools; and fact sheets on employee notice requirements and how to calculate FMLA leave, rules for military family leave, and other topics.

Source: Article written by Lorene D. Park, J.D. and originally published in the June 15, 2016 edition of Employment Law Daily, a Wolters Kluwer Law & Business publication.

THE "NO PRESSURE" APPROACH: KEY TO EFFECTIVE PHONE CONVERSATIONS

By John Rosso, CEO, Sandler Training by Peak Performance Management, Inc.
Article originally published in http://www.hr.com Excellence Essentials Articles.

Let's face it. Prospecting is the life-blood of sales – no appointments, no sales. Poor phone prospecting creates fewer sales. Exceptional phone prospecting leads to great sales. So then why do so many salespeople treat phone prospecting like some plague they would rather avoid? Or equally as bad—convince themselves that it is outdated and extinct?

Few salespeople like calling prospects for appointments, but you don't have to like it, (at least initially) – you just have to do it.

Here are a few tips to get you started with developing your own no pressure approach call.

Let's start with the things you want to avoid in your approach call. You want to avoid being a stereotypical salesperson. Being a stereotypical salesperson leads to a stereotypical reaction which is either to fight or flee — and neither one makes you any money.

Here are 3 things you should avoid doing as to not be pegged as a stereotypical salesperson:

1. **Avoid sounding too happy** by excitedly saying, "Hi Prospect! Nice to talk to you!"
2. **Avoid being too needy and** using phrases like, "I would just," or "I would love"
3. **Avoid using "How are you today?"** when you start the call. This is seemingly a nervous tic that 95% percent of salespeople suffer from and you can just feel the prospect's defense wall descending.

All of these phrases raise the defenses of your prospect and they immediately can detect that they have a "pesky" salesperson on the line. Using these phases puts you in a "less than" position and decreases your chances of setting an appointment with a qualified prospect.

What you want to do is reframe your approach. By reframing your approach, you will take the pressure off of yourself and the prospect.

To create a no pressure approach call, you will want to include the following elements:

First, use a pattern interrupt. You can develop a pattern interrupt by finding a way to create some curiosity with your prospect and bring down the defense walls. One way to do that is by saying something like: "Hey Prospect, John Rosso, I am looking for some help. I am not sure if it makes sense for us to talk. I am calling you for two very specific reasons…

Your tonality should be "business edge"— it should have a slight sense of urgency without any arrogance.

The next step is to use a mini upfront contract. A mini upfront contract establishes the time, agenda and outcome of the conversation. Here is an example:

"Let me take a minute or so and share with you the reasons why I'm calling and then we'll decide if it makes sense to continue."

The first seconds of the approach call are critical. These two tactics, when used together, are only approximately 8 to 12 seconds of your approach call, but they sell you a 3 to 5 minute conversation.

Make a "personal connection." This takes the edge off the call and builds a bridge of likability and connection. It also becomes clear that you know a thing or two.

There are three ways you can make a personal connection. The first is the easiest. It is a common connection. For example, it may sound like, "The first reason I am calling is that I had a very nice conversation with Dave Mattson recently. He thought it might be important that we speak and I promised him I would reach out to you."

THE "NO PRESSURE" APPROACH: KEY TO EFFECTIVE PHONE CONVERSATIONS (CONT).

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The second way to make a personal connection is to do a small bit of research on who you are calling. This is where LinkedIn and Google are really helpful.

For example: "Bob, the first reason I am calling is I see that you have recently spoken at the National Safety Conference in Las Vegas on culture as a predictor of accidents on the job."

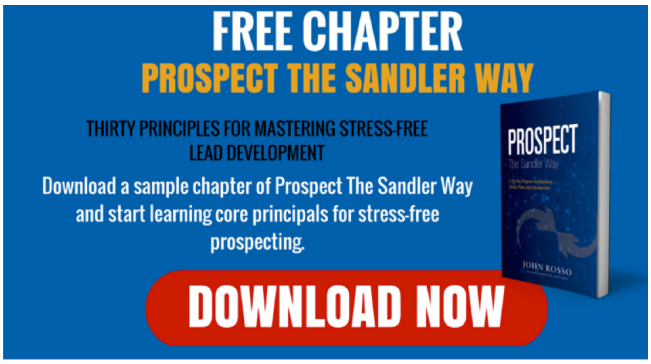
The third way to make a personal connection is to reference recent and relevant information about the company. It might sound like: "Bob, the first reason I am calling is that I recently read in Crain's Business that you have opened a new facility in Toledo, Ohio."

The meat of the approach call is a little easier and is also important to landing and keeping the appointment. You want to make sure you do the following:

1. Have a good ten second commercial on who you are. Match and mirror the title and industry you are calling. For example, " I am with Safety International, a leader in fall protection gear, I spend most of my time with Vice Presidents of Environmental, Health and Safety"
2. Tell good third party stories about the kinds of frustrations, pains and problems that the prospect may be experiencing. They are not interested yet that the company you are calling from was founded in 1948.
3. Develop the "pain indicator." When the prospect admits a challenge that you can help her with, ask, "Tell me more," "Can you give me an example?", "How does that impact you?"
4. Close for the appointment. Set an up-front contract for a clearly defined date in the calendar. Next step: Share the kinds of information they need to bring and then post-sell the appointment.
5. Post-sell. Rehearse with them on any reason why they wouldn't be here or why that would change.

Avoid the traps of stereotypical tonality and the stereotypical pattern-conditioned response salespeople typically use. Like anything else in life, you will need to practice this approach and you will get good at it. It is a great way to take the pressure out of the approach call and, more importantly, build your business by meeting quality prospects.

Download a sample chapter of my best-selling book, Prospect The Sandler Way, and start learning core principles for stress-free prospecting.



About Sandler Training by Peak Performance Management and John Rosso:

Sandler Training by Peak Performance Management, based in Pittsburgh, PA and Charleston, SC has helped thousands of sales professionals and business leaders achieve success using the Sandler System—a step-by-step program that involves counter intuitive psychological principles to generate sales leads and close deals.

Peak Performance's team of sales experts and presenters has worked with businesses in every industry—from professional services and hospitality to manufacturing and health care. Their honest, no-nonsense sales techniques get results while preserving the sales professional's self-respect and dignity. The trainers at Peak Performance coach, challenge and entertain professionals while leading them towards successful careers.

Combined, the trainers have over 250,000 hours in their careers teaching or speaking to groups about Sandler's innovative method.

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