
PERSPECTIVES

SPECIAL CONFERENCE EDITION

SEPTEMBER 2016



68TH ANNUAL CONFERENCE:
“HONORING THE PAST, TREASURING THE PRESENT, SHAPING THE FUTURE”

PHRA
PITTSBURGH HUMAN RESOURCES ASSOCIATION

AFFILIATE OF
SHRM
SOCIETY FOR HUMAN
RESOURCE MANAGEMENT



Point of View

Jeff Dressler, President, PHRA

Honoring the Past, Treasuring the Present, Shaping the Future

Dear PHRA Members, Vendors and other Attendees,

Welcome to the Pittsburgh Human Resources Association's 68th Annual Conference and Exhibition! This year's conference "**Honoring the Past, Treasuring the Present, Shaping the Future**" will provide you a connection to your past, opportunities for the present day, and new ideas to shape your future with greater ease and clarity. I had the opportunity to attend SHRM's 2016 Annual Conference and their theme focused on finding your breakthrough moment. I believe that for HR professionals to shape their future they need to experience their own breakthrough moment. The PHRA Annual Conference and Exhibition is the best HR learning, sharing and developmental opportunity in the region that is designed specifically to provide you the stage to find your breakthrough moment and shape your future.

Your breakthrough moment may happen as you listen to one of our 4 keynote speakers, who are leaders in business and HR. It may come during one of the many learning opportunities from over 20 concurrent sessions or our NEW Rockin' HR, which has been designed to challenge and disrupt your thought process. You may find your moment in our exhibition hall, where over 60 companies will have solutions to your toughest problems. Or you may find it with a connection you make with a professional from across the region. You never know where you may find the breakthrough moment that will shape your future.

Today, the top challenges facing organizations are those that involve people management. Workplace issues are at the forefront of all SHRM Conference and national conversations. Moreover, the changing nature of employment and employees will continue to put HR out in front to lead business. This means you must be well-positioned to shape your future. Our PHRA Conference Planning Committee has made every effort through their planning process to connect with our membership to determine your current needs to make sure this year's conference is timely, informative and memorable.

Our 68th annual PHRA Annual Conference is a lot of learning packed into a short amount of time, so have fun, enjoy learning and networking, and shape your future! I look forward to connecting with you on October 13th-14th at the conference. Reserve your seat today: <http://www.pittsburghhra.org/events/EventDetails.aspx?id=741252>.

A handwritten signature in black ink that reads "Jeff Dressler". The signature is fluid and cursive.

Jeff Dressler
PHRA President

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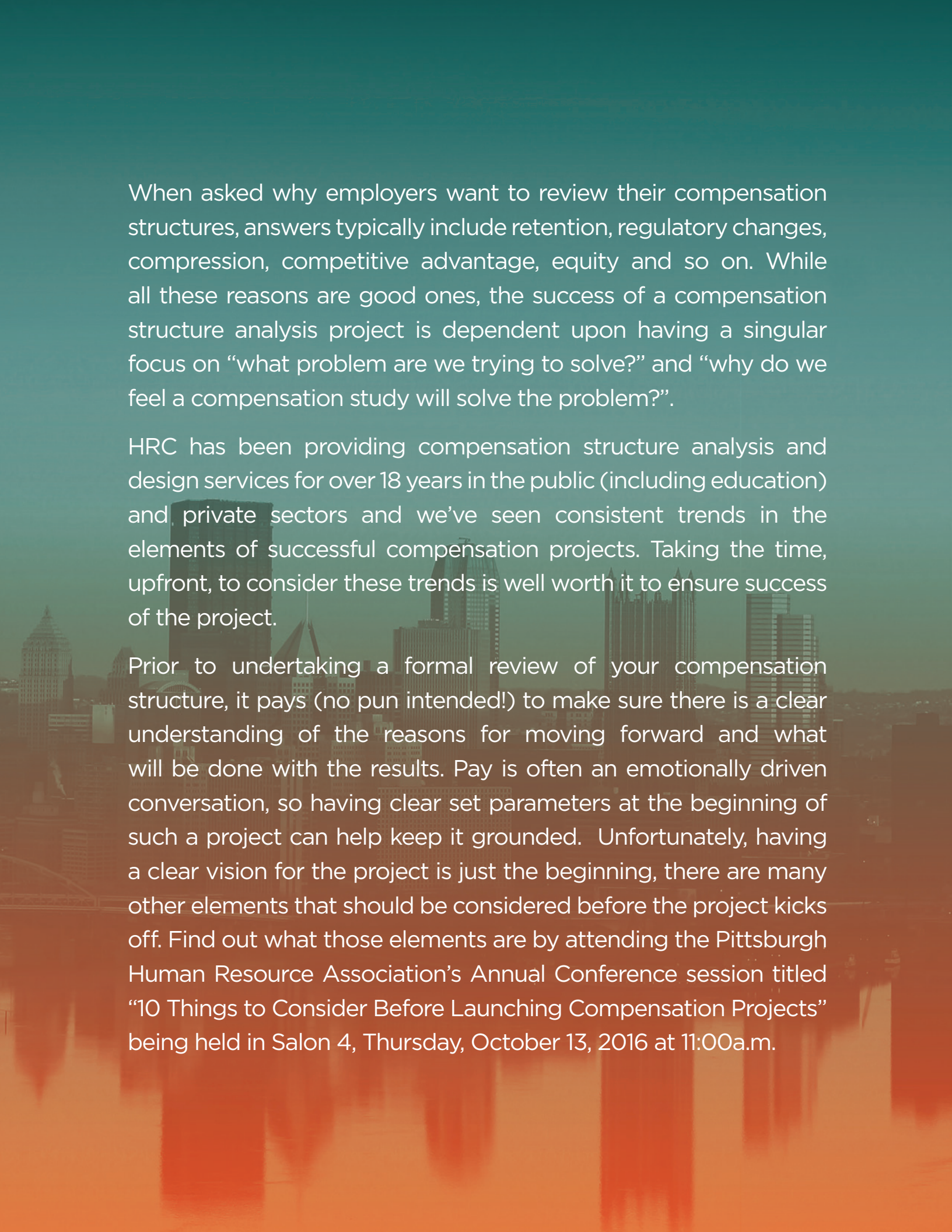
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When asked why employers want to review their compensation structures, answers typically include retention, regulatory changes, compression, competitive advantage, equity and so on. While all these reasons are good ones, the success of a compensation structure analysis project is dependent upon having a singular focus on “what problem are we trying to solve?” and “why do we feel a compensation study will solve the problem?”.

HRC has been providing compensation structure analysis and design services for over 18 years in the public (including education) and private sectors and we’ve seen consistent trends in the elements of successful compensation projects. Taking the time, upfront, to consider these trends is well worth it to ensure success of the project.

Prior to undertaking a formal review of your compensation structure, it pays (no pun intended!) to make sure there is a clear understanding of the reasons for moving forward and what will be done with the results. Pay is often an emotionally driven conversation, so having clear set parameters at the beginning of such a project can help keep it grounded. Unfortunately, having a clear vision for the project is just the beginning, there are many other elements that should be considered before the project kicks off. Find out what those elements are by attending the Pittsburgh Human Resource Association’s Annual Conference session titled “10 Things to Consider Before Launching Compensation Projects” being held in Salon 4, Thursday, October 13, 2016 at 11:00a.m.

68th Annual PHRA Conference & Exhibition

October 13 & 14, 2016

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Top Five Reasons Why You Should Attend the PHRA Annual Conference & Exposition

1. FRESH PERSPECTIVES

Our speakers will offer fresh perspectives and inspiring stories that can help shift your perspectives and deepen your understanding of leadership, motivation, and success. You'll hear from business leaders, HR practitioners, consultants, and academicians that will provide insights that can change how you do your work and how you see the world of human resources.

2. COMPREHENSIVE LEARNING

Over 20 concurrent sessions provide a complete education for HR professionals at every stage of their career. You'll be able to choose from a broad range of topics so you can customize the learning you need. Concentrate on solutions designed to help your organization become more compliant; delve into the cutting-edge trends that will impact your workplace in the next few years; build a strategic talent management plan to increase engagement and retention. Whatever you need, our conference will have something for you.

3. EXTRAORDINARY NETWORKING

Networking opportunities with your peers and colleagues from across your organization and around the region. From our vast Exposition Hall, to our networking social, there are ample opportunities for you to meet HR professionals who share your goals and your challenges.

4. ENDLESS SOLUTIONS

The region's largest HR marketplace, the PHRA Exposition, gives you access to solution-providers in over 40 industries.

5. CERTIFICATION

This year's conference will provide recertification options for the PHR/SPHR and the new SHRM CP/SCP.

Absence is Costing You More Than You Think!

Healthcare, Healthcare, Healthcare, that's all anyone, is ever focused on these days, and rightfully so. However, absence management can be costly for employers, sometimes more than their healthcare costs!

Managing employee absences is one of the most challenging personnel issues for employers. The laws are ever-changing and overlapping, and should an employer not administer these laws appropriately, they can be required to pay penalties and damages which surpass that of their healthcare... YIKES!

"Did you know the direct cost of absence as it relates to payroll is 15.4%. Lost productivity costs are 6.2% of payroll, with replacement workers being 31.1% less productive."

If you do the math, that is a lot of money for organizations! This doesn't include fines which can be brought against the employer should a law suit be filed for not complying with FMLA or ADA guidelines. However, there is good news for employers. Those who manage workplace absences are those who will see these costs decrease and productivity of your employees increase. Let's review the steps employers can take to audit themselves and determine if they need to make any changes in their absence program:

1. Review your FMLA and ADA policies
2. Do employee communications comply legally with FMLA and ADA.
3. Train HR and Managers on FMLA and ADA issues.
4. Make certain you have complied with Federal and State notice-posting requirements.

Another way to enhance these efforts in controlling workplace absence is integrating your absence program with that of your company's disability and wellness programs. Often absences can be the start of disability claims. When integrated with each other, carriers can evaluate these programs simultaneously and any overlapping parts processed accordingly. Having a third party adjudicate the claims together does a couple of things for employers:

5. Streamlines the claims process
6. Ensures compliance on FMLA and ADA laws
7. Takes the legal liability off the employer
8. Can lower STD and LTD costs
9. Allows the employer to focus on their business

Finally, by integrating your absence and disability programs, employers will not only see a reduction in cost of these programs, but it will improve employee's moral and overall health.

"Did you know that employers who implement return-to-work programs can lower STD and LTD costs by about 30%."

So, next time your benefits advisor asks to review your absence and disability programs just think you could simplify these programs, reduce your total cost of absence, and ensure compliance outsourcing and combining these programs with a third party.

DOL Announces Indexed ERISA and Other Increased Penalties

Arthur J. Gallagher & Co.

On June 30, 2016, the Department of Labor (“DOL”) issued inflation-adjusted amounts for penalties assessed after August 1, 2016 for certain ERISA fiduciary, reporting, and disclosure requirements along with numerous other wage and hour, benefit, and safety regulations. The increase in penalties is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“Inflation Adjustment Act”) which was signed into law on November 2, 2015. The increased penalties will be effective August 1, 2016 for violations that occurred after November 2, 2015. The increased amounts do not apply to violations that occurred before November 2, 2015 or to penalties that are assessed before August 1, 2016.

The DOL’s guidance changes three specific areas: rounding, catching penalties up to October 15, 2015 values, and an annual adjustment based on inflation. Each is addressed below.

Rounding under the new rules

Previously, adjustments to penalties were rounded significantly. For instance, a penalty increase that was greater than \$1,000, but less than or equal to \$10,000, would be rounded to the nearest multiple of \$1,000. Thus, a calculated penalty increase of \$6,550 would have been rounded to \$7,000. As a result, the amount of the increase was sometimes substantial. Under the new law, penalties

will be rounded to the nearest dollar.

Catch-Up Adjustments

Under the Inflation Adjustment Act, agencies such as the DOL are required to adjust their penalties for inflation through October 15, 2015. Under a specific formula based upon the Consumer Price Index for all Urban Consumers and a cap of no more than 150% of the penalty amount in effect in November 2015, the DOL determined the catch-up amount for each penalty. For example, the penalty for failure to file a Form 5500 was originally \$1,000 per day when it was first required to be filed in 1987. The DOL calculated an inflation factor from 1987 to October 2015 of 2.06278. Applying this inflation factor to the original penalty results in a potential new penalty amount of \$2,063 per day. The failure to file a Form 5500 penalty amount in effect when the Inflation Adjustment Act was enacted was \$1,100. Since \$2,063 per day is less than 150% of \$1,100 (150% of \$1,100 = \$2,750), the new penalty amount is \$2,063.

As expected, the increase in the dollar amount of penalties is more modest for newer requirements since the initial adjustment factor is smaller. For example, the penalty for failure to provide a Summary of Benefits and Coverage (“SBC”) only increases from \$1,000 to \$1,087. Following is a list of the current and new penalties contained in the DOL’s Fact Sheet for health and welfare plan requirements.

Requirement	Current Penalty	New Penalty
Form 5500 Filing	Up to \$1,100 per day	Up to \$2,063 per day
Form M-1 Filing (MEWA)	Up to \$1,100 per day	Up to \$1,502 per day
Provide Plan Documents requested by DOL (e.g., SPD, SMM)	Up to \$110 per day not to exceed \$1,100	Up to \$147 per day not to exceed \$1,472
Annual CHIP Notice	Up to \$100 per day	Up to \$110 per day

DOL Announces Indexed ERISA and Other Increased Penalties cont.

Requirement	Current Penalty	New Penalty
Disclosure to States about coordinating with Medicaid, CHIP enrollment	Up to \$100 per day	Up to \$110 per day
GINA Violations	\$100 per day during non-compliance period	\$110 per day during non-compliance period
Maximum for De Minimis Failures under GINA	\$2,500	\$2,745
Minimum Penalty for Failures Not Corrected under GINA	\$15,000	\$16,473
Cap on Unintentional Failures under GINA	\$500,000	\$549,095
Failure to Provide SBC	Up to \$1,000 per failure	Up to \$1,087 per failure

Annual Inflation Adjustments

Beginning in 2017, the DOL will annually announce inflation adjustments to penalty amounts no later than January 15 of each year. For example, by January 15, 2017, the DOL will adjust penalty amounts to reflect any increase in inflation from October 2015 to October 2016. The new amounts will be posted on the DOL's website; they will not be provided in the Federal Register in the manner that prior increases were announced.

The DOL also increased penalties for certain pension requirements such as the failure to furnish pension benefit statements to certain former participants and beneficiaries or maintain records. Those penalties are not included in this article, but are available in the Interim Final Regulations ([click here to access](#)) and a Fact Sheet issued by the DOL ([click here to access](#)). In addition, the regulations increase the penalties for some non-ERISA requirements such as the employer notice requirement under the Family and Medical Leave Act which is administered by the DOL's Wage and Hour Division. A complete list of those penalties and other employment law penalties is included in the Interim Final regulations ([click here to access](#)). Finally, the DOL has also included 11 FAQs ([click here to access](#)).

Organizational Impact

These increases in the various employment law penalties signal the Department of Labor's continuing focus on compliance. More than ever, organizations will find it necessary to pay attention to compliance, both now and in the future as additional regulatory changes are sure to arrive.

While the need to spend more time on compliance requires additional time from valuable resources, there is a silver lining. Most regulations are intended to help employers treat employees fairly and to keep them safe. Organizations who create a Human Resources strategy and a reward philosophy that are based on competitive and equitable practices will find themselves less likely to be at risk for many of the penalties discussed in this article.



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Project Management for Human Resource Professionals

by David B. Newman, PMP, SPHR and Lisa Hammer, PMP
Principals, Leadership Techniques, LLC

Project management is no longer the “accidental” profession. In fact, it is much more than a profession, or a title, or a job. Project management is an essential set of skills and techniques that are transferable to virtually any profession, and for Human Resource (HR) professionals Project management has become absolutely fundamental to the mission.

There are three reasons for HR professionals to learn project management:

1. There are projects in HR that need to be completed on-time while not disrupting the regular workflow.
2. HR professionals need to recruit and retain the best project management talent. To do that you must understand the project management environment and skills.
3. HR knowledge is tested for HR certifications at all levels.

What projects are happening in HR? Well, to answer that, just ask yourself if you or your colleagues have ever been asked to complete a finite set of tasks in addition to whatever you were hired to do. How about implementing a new performance management system? Open enrollment? A special event?

A project consists of a set of tasks with a common purpose defined by a specific timeline. Projects have beginnings and they have an end. If the work you’re doing doesn’t have an end, then it’s not a project! Executing project work comes naturally to many, which is why sometimes we don’t recognize that we’re doing project management.

The successful execution of projects against demanding requirements and objectives is facilitated greatly by an understanding of the tools and techniques that are available to help us get the work done. You’ll be surprised

at how much more effective you can be when you learn just a little bit about critical path scheduling and other similar tools that are easy to use, simple to learn, and very cost effective to implement.

The truly beautiful thing is that for you, the HR professional, the most difficult aspects of project management are already well within your wheelhouse. You are likely to be trained in the skills with which most Project Managers struggle! Communications, for example, is the root cause of many project disasters! The ability to get the right information to the right people at the right time comes back to emotional intelligence and understanding perspectives. The soft skills, as they are known, are a specialty for HR professionals, while many technical Project Managers wrestle with interpersonal and social skills.

Lisa and Dave bring a unique perspective of project management. You’ll enjoy a lively and interactive discussion of industry best practices that you will be able to apply immediately. We’ll also delve a bit into the mind of the typical Project Manager so that you can understand the unique elements of this most demanding position.

Understanding project management and those that labor in this exciting and unique career will not only help you to get your work done, it will help you propel your organization forward and upward in every way. Improved efficiency, better performance against metrics, a happier and more satisfied workforce – all of this and more are available to you as an HR professional with a solid understanding of project management.

Overbroad Non-competes: A Cautionary Tale

In the recent case of *Adhesives Research, Inc. v. Newsom*, CIVIL NO. 1:15-CV-0326 (M.D. Pa. Apr. 23, 2015), the U.S. District Court for the Middle District of Pennsylvania imposed harsh punitive measures on the employer for extracting an overbroad covenant not to compete from its employee. In particular, the non-compete prohibited Newsom, a salesperson, from competing with Adhesives Research not just in her sales territory, but in the entire United States. The Hon. William W. Caldwell found that this was not a reasonable geographic scope given that she had a specific sales territory. The agreement thus unnecessarily made it impossible for Newsom to continue to work in the industry.

Pennsylvania courts enforce covenants not to compete that are reasonably necessary for the protection of legitimate interests of the employer and reasonably limited in duration and geographic extent. *Hess v. Gebhard & Co., Inc.*, 808 A.2d 912, 917 (Pa. 2002). The law defining how much restriction is reasonable is ever-evolving, and courts will frequently “blue pencil” restrictions, declining to enforce their full duration and/or geographic scope but enforcing a reduced duration and/or geographic scope.

For example, a non-compete that restricts an employee from competing within a fifty-mile radius for two years may be reduced to twenty-five miles and one year. In making these adjustments, courts must balance the interests the employer legitimately seeks to protect with the employee’s need to earn a living. “Pennsylvania courts have historically viewed such covenants as contracts in restraint of trade that prevent a former employee from earning a livelihood, and, therefore, have disfavored such provisions in the law.” *Socko v. Mid-Atlantic Sys. of CPA, Inc.*, 126 A.3d 1266, 1273-74 (Pa. 2015). Consequently, covenants not to compete are strictly construed against the employer. *All-Pak, Inc. v. Johnston*, 694 A.2d 347, 351 (Pa. Super. 1997).

In refusing to blue pencil the agreement to limit its geographic scope, the court quoted the Supreme Court of Pennsylvania in *Sidco Paper Co. v. Aaron*, 351 A.2d 250, 257 (1976) as instructing that such overbreadth “militates against enforcement because it indicates an intent to oppress the employee and/or to foster a monopoly, either of which is an illegitimate purpose.”

The takeaway from this case is that employers extract overbroad covenants not to compete from their employees at their own peril. While this is not a new rule in Pennsylvania, the recent *Adhesives Research* case is sure to be quoted in any litigation regarding overbroad non-competes for the foreseeable future. At the time of drafting, employers should carefully determine how much restriction is really necessary to protect their business interests. Instead of employing boilerplate forms with broad restrictions, employers should draft non-compete agreements on a case-by-case basis, carefully considering how much restriction is necessary to protect the employer’s legitimate business interests for a particular employee or group of employees. Qualified attorneys can assist the employer in defining a restriction that is likely to be enforced under current Pennsylvania case law.

Andrew J. Horowitz, Esquire is an attorney with the Pittsburgh office of Obermayer Rebmann Maxwell & Hippel LLP. Attend his session at the Fall PHRA conference titled “Recent Developments in the Law of Employment Restrictive Covenants in Pennsylvania.” The session will focus on Pennsylvania law regarding the enforceability of restrictive covenants on employment (including covenants not to compete and covenants not to solicit customers or employees), with a focus on recent developments in the law. The session will include guidance on best practices to ensure that such covenants are enforceable.

Why your Employer Brand matters in recruiting workforce talent in Pittsburgh

Competition for jobs and workforce talent in the global economy puts pressure on industries and communities. The success of regional economies is increasingly defined by their people and the quality and engagement of their workforce.

Western Pennsylvania has made internationally recognized gains over the past 30 years, but it must transform itself once again to stay competitive by attracting and retaining top talent.

While the nation as a whole faces an unprecedented workforce shortage, Pittsburgh's demographics make the challenge especially daunting. Regional Baby Boomers are expected to retire at a rate of about 29,000 every year, and without significant efforts we will not have a deep enough pipeline of younger talent to fill those gaps.

For the first time, we have hard numbers about this looming reality. According to a 2016 report commissioned by the Allegheny Conference on Community Development entitled, "Inflection Point: Supply, Demand and the Future of Work in the Pittsburgh Region," employers in the region will need to fill 34,000 jobs every year until 2025 due to retirement and new job creation.

This is an enormous challenge, but also an extraordinary opportunity.

Talent acquisition has undergone significant change in recent years, with a fundamental shift in the way that organizations source, engage, on-board and retain talent. "Posting and praying" continues to decline as forward-thinking organizations now proactively find, attract and retain the best candidates, even those who aren't looking for new roles.

"In the past five years, we have seen multiple leading employers transform the recruiting function," said Kip Soteres, a change communication expert who consults with NFM Group and is President of Soteres Consulting. "These organizations create grand narratives that span initial recruitment advertising and job fairs all the way through the first year of employment.

They invest in this approach because it treats new employees as both a customer of and ambassador for the company, and it yields tremendous benefits – better candidate pools, better hires, lower recruiting costs, faster time to productivity, and higher employee engagement and retention."

In recent years, talent acquisition leaders have placed an increasing emphasis on Employer Brand and a disciplined process to successfully accomplish these results. The lines between recruiting and communications continue to blur, with the adoption of some recruiting strategies more commonly seen in marketing. At the center of these efforts is employer branding.

Overall brand impacts job consideration, though not as much as Employer Brand

Every day, you engage your brand to attract customers. But how well do you use it to attract, engage and retain exceptional new employees? Research overwhelmingly demonstrates that a strong Employer Brand builds greater job satisfaction among current employees and inspires potential new hires to want to learn more. Companies that invest in their Employer Brand are therefore likely to see a direct impact on their talent acquisition efforts. A strong Employer Brand is more memorable, spreads to others more quickly, and will draw more people to your

Why your Employer Brand matters in recruiting workforce talent in Pittsburgh **cont.**

primary brand attributes. . . which means they will be more likely to fit within your company culture.

That's why BrandPosition™ from NFM Group, a proprietary, multi-pronged process that uses the untapped power of your brand, will assist in meeting the talent acquisition challenges that the Pittsburgh region faces in the near future.

The three building blocks of BrandPosition™

Research overwhelmingly demonstrates that a strong Employer Brand builds greater job satisfaction among current employees and inspires potential new hires to want to learn more.

1. Positioning

NFM Group will partner with you to create strong recruiting messages grounded in your brand that can be implemented immediately to target active and passive prospects by understanding your culture, create a clear and compelling call to action, strategically combine traditional and digital media, and measure progress.

2. Hiring and recruiting

Your message is out, but how do you draw the right prospects in? At NFM, we are experts in creating memorable, often high-volume hiring "experiences" to target the applicants most inherently aligned with your brand.

3. On-boarding and retention

Hiring is just the beginning. Make sure that new hires are hearing consistent messages that align with what they heard when they were recruited. BrandPosition includes a wide range of industry-leading strategies, templates and tactics to help you lead employees to productivity faster and build their engagement in the critical days and months after their start dates.

Moving forward

Because your organization's Employer Brand is the strategic foundation of your recruitment messages, it's worth spending the time to fully understand and develop that brand. An investment in the strengthening of your Employer Brand, when done right, will help increase consideration of your company, lower recruiting costs, and decrease voluntary turnover.

A breakout session focusing on the Employer Brand and the process of attracting, recruiting and retaining employees will be held on Friday, October 14 at 10:30 am during the PHRA conference. More information is also available by visiting the NFM Group booth during the conference or their website at www.nfmgroup.com.

Addressing the Threat of Violence in the Workplace

By Norbert “Bert” Alicea, MA, CEAP, Executive Vice President of EAP+Work/Life Services

Health Advocate

Violence in the workplace continues to make headline news, yet while two million Americans are impacted each year, 70 percent of organizations still do not have a plan in place to address this issue. While it may be difficult to ever feel truly prepared for something of this nature, understanding workplace violence and taking steps to prepare can help minimize the risk of an incident while keeping organizations and their employees safe.

Most people associate workplace violence with active shooter incidents, however, it can encompass a wide range of situations, including domestic violence, fights between colleagues, angry customers, property damage, written threats, and more. Workplace violence causes an average of 700 homicides each year. In addition to the invaluable cost of human life, the annual economic cost of workplace violence is \$121 million, and the repercussions are innumerable.

Understanding the issues that can contribute to a violent situation is key to identifying potential risks within an organization. While random, delusional people are potential threats, more frequently the perpetrator is a disgruntled employee or someone involved in a domestic disturbance that has spilled over into the workplace. Issues at work such as downsizing or feeling undervalued could be triggers for employees, as well as personal problems like relationship trouble, legal issues or a financial crisis.

In these instances, management plays a key role in what happens next. Many managers and supervisors may hesitate to dig into employees' personal lives due to concerns about privacy issues. However, by supporting employees, it is

possible to have an open a dialogue that can allow for any issues to be addressed together, whether they be work-related or otherwise. When employees are treated with dignity and respect, they are less likely to act out, minimizing the potential threat to an organization.

Yet even before a potential issue is identified, organizations need to take the time to prepare in order to minimize risk and perhaps prevent incidents of violence. However, the majority of businesses do not currently have a program or policy in place to address this issue. By taking the time to create an action plan and provide training to all employees, organizations can ensure their workforce has the knowledge needed to address potential problems and respond appropriately.

While it may not always be possible to prevent an act of violence in the workplace, by planning ahead, it is possible to minimize the risk and protect both employees and the organization.

To learn more about this important issue, including how to initiate a prevention and response plan for your organization, please join Bert Alicea at the upcoming PHRA Annual Conference session, “Managing Threats of Violence: Best Practices Using EAP in High-Risk Situations,” on October 13 at 1:00 p.m., in Salon 4 at the DoubleTree by Hilton Pittsburgh Green Tree.

Proceed with Caution: 5 Steps to Help Avoid an FCRA Class Action Lawsuit

My family recently returned from a trip to the beautiful Indiana Dunes State Park. One of the features of the park is a rugged, self guided, 1.5 mile trail over three of the largest sand dunes in the park. This trail is referred to as the "Three Dune Challenge". The start of the trail includes a warning that the Three Dune Challenge is the most difficult in the park and is intended only for experienced, physically-fit hikers. Hikers are warned to be realistic about their hiking ability and **proceed with caution**.

These words of wisdom could certainly be applied to the current challenges faced by organizations in regards to their background screening programs today. We are just a little more than halfway through the year and already there have been at least 27 FCRA class action lawsuits filed against employers, with twelve class action suits being filed in the months of June and July alone. (Littler Report August 2014) Employers are currently facing difficulties unheard of in past years. From retailers to trucking companies, no industry appears to be exempt and with fines of up to \$1,000 per violation, employers are faced with the potential of having to pay millions of dollars in damages. Unquestionably, now is the time to take a realistic look at your FCRA policies and make sure they are one hundred percent compliant. Thankfully, protecting your company is certainly not an insurmountable task.

Just stay on the path & don't fall into the same traps as these other employers

The FCRA lays out a pretty clear path that employers MUST abide by. Following these five steps will help to protect your organization:

- 1. Disclosure** – A stand alone disclosure form stating that you are going to be performing a background check on an applicant must be provided prior to conducting any background screening. Companies have been found in violation of the FCRA because they included "extraneous" language on disclosures. The courts have ruled against employers who include disclosures within job applications or who have included release of liability verbiage on disclosure forms.
- 2. Authorization** – Applicants must complete an authorization form that permits you to conduct a background check on him/her. It is essential to have a valid signature on this form prior to beginning the background check process.

- 3. Pre-adverse action** – If a background report uncovers information that is going to negatively impact an applicant's ability to get a job, you must first follow the required pre-adverse action procedure. Several organizations have been penalized for not providing applicants with a copy of their report, not allowing applicants a chance to dispute their report, and not providing applicants with the required Summary of Rights. It is important to note, the fact that some companies who have opted out of providing Pre-Adverse action despite their background check provider offering an FCRA Compliance service which send out Pre-Adverse action notices, have been shown in court to have "willfully" violated the FCRA.

- 4. Allowing a reasonable time for applicant's to dispute information** – Another complaint against employers has been that they did not provide a sufficient amount of time for applicants to dispute the findings of their report. The FCRA does not specify the exact amount of time employers should allow for applicant's to dispute information, but it is generally accepted as five working days.

- 5. Adverse action** – Applicants must be provided with an adverse action letter, a completed report, a Summary of Rights, and your CRA's contact information.

Protecting your company and remaining compliant with the FCRA can certainly feel like a challenge, particularly when class action lawyers are buzzing around you looking for any small details you may have missed. Fortunately, Justifacts is available to help with a knowledgeable staff and 32 years of industry experience. We provide detailed educational information on FCRA regulations, sample disclosure and authorization forms, a fully automated adverse action tool that can assist our clients in generating and tracking the entire adverse action process, and a full time Compliance Team who is available to help handle situations as they arise regarding adverse information that is found on an applicant's report.

For more detailed information about the FCRA, please download our Guide to Understanding the FCRA: [Download Guide](#)

It is important to note that Justifacts is providing this information as a service to our clients. None of the information contained herein should be construed as legal advice, nor is Justifacts engaged to provide legal advice. Although we go to great lengths to make sure our information is accurate and useful, we recommend you consult your attorney or legal department if you want assurance that our information, and your interpretation of it, is appropriate to your particular situation.

Addressing the Threat of Violence in the Workplace

By Norbert “Bert” Alicea, MA, CEAP, Executive Vice President of EAP+Work/Life Services

Health Advocate

Violence in the workplace continues to make headline news, yet while two million Americans are impacted each year, 70 percent of organizations still do not have a plan in place to address this issue. While it may be difficult to ever feel truly prepared for something of this nature, understanding workplace violence and taking steps to prepare can help minimize the risk of an incident while keeping organizations and their employees safe.

Most people associate workplace violence with active shooter incidents, however, it can encompass a wide range of situations, including domestic violence, fights between colleagues, angry customers, property damage, written threats, and more. Workplace violence causes an average of 700 homicides each year. In addition to the invaluable cost of human life, the annual economic cost of workplace violence is \$121 million, and the repercussions are innumerable.

Understanding the issues that can contribute to a violent situation is key to identifying potential risks within an organization. While random, delusional people are potential threats, more frequently the perpetrator is a disgruntled employee or someone involved in a domestic disturbance that has spilled over into the workplace. Issues at work such as downsizing or feeling undervalued could be triggers for employees, as well as personal problems like relationship trouble, legal issues or a financial crisis.

In these instances, management plays a key role in what happens next. Many managers and supervisors may hesitate to dig into employees' personal lives due to concerns about privacy issues. However, by supporting employees, it is

possible to have an open a dialogue that can allow for any issues to be addressed together, whether they be work-related or otherwise. When employees are treated with dignity and respect, they are less likely to act out, minimizing the potential threat to an organization.

Yet even before a potential issue is identified, organizations need to take the time to prepare in order to minimize risk and perhaps prevent incidents of violence. However, the majority of businesses do not currently have a program or policy in place to address this issue. By taking the time to create an action plan and provide training to all employees, organizations can ensure their workforce has the knowledge needed to address potential problems and respond appropriately.

While it may not always be possible to prevent an act of violence in the workplace, by planning ahead, it is possible to minimize the risk and protect both employees and the organization.

To learn more about this important issue, including how to initiate a prevention and response plan for your organization, please join Bert Alicea at the upcoming PHRA Annual Conference session, “Managing Threats of Violence: Best Practices Using EAP in High-Risk Situations,” on October 13 at 1:00 p.m., in Salon 4 at the DoubleTree by Hilton Pittsburgh Green Tree.

The Two Most Feared Four Letter Words in Human Resources - FLSA & FMLA

The Fair Labor Standards Act and the Family and Medical Leave Act are complex pieces of legislation, creating liability for employers and headaches for HR and payroll professionals. Assuring compliance requires more than a basic knowledge of these laws. This session at the upcoming PHRA conference will prepare attendees to avoid some common pitfalls in administration and establish effective payroll practices through a deeper dive into the details.

Lawsuits filed under the FLSA are the most frequent employment claims filed in federal courts, with nearly 9,000 brought in 2015. Employer settlements cost employers \$2.5 billion. The FLSA portion will include a discussion about the overtime impact of:

- Day rate, shift rate or fluctuating work week plans,
- Bonus plans used to incentivize attendance, productivity or safety and
- Non-monetary compensation provided for the employee's benefit

Preventive actions employers can take will be shared, such as arbitration agreements and payroll audits.

As we all know, the Family and Medical Leave Act provides eligible employees of covered employers with up to 12 weeks of unpaid, job-protected leave during a 12-month period. While seemingly straightforward on its face, managing FMLA leave can be one of the most challenging, confusing, and headache-inducing aspects of any HR manager's responsibilities. It's an employment law that continues to trip up even the savviest and most sophisticated of HR professionals. Moreover, the availability of interference and retaliation claims to employees of employers who get it wrong makes FMLA administration a risky, high-stakes game.

Thankfully, there are a handful of tips, tricks, and best practices for avoiding common mistakes in administering the FMLA's requirements. During our time together, we will discuss advanced FMLA topics such as:

- Administration of FMLA leave for same-sex spouses
- Managing intermittent leave
- Whether employers can still designate FMLA-qualifying leave if the employee refuses
- Dealing with suspected leave abuse and fraud
- Contacting an employee on leave & pitfalls of allowing an employee to work on leave
- Addressing misconduct discovered while an employee is out on leave
- What to do with the employee who is unable to return to work after his 12-week entitlement expires

Julie Moore is a Member of Steptoe & Johnson. Julie focuses her practice primarily in labor and employment law. She regularly advises and counsels employers on various aspects of employment law, ranging from wage and hour compliance, to employee discipline and termination issues, to disability accommodation requests. Julie routinely conducts customized in-house training programs for her clients' supervisors and HR personnel on a variety of employment law topics, including harassment and FMLA compliance. She also works with employers on reviewing and drafting their employee handbooks and other personnel policies. Julie regularly defends employment lawsuits in state and federal courts throughout Pennsylvania and West Virginia, as well as charges filed before the Pennsylvania Human Relations Commission, the West Virginia Human Rights Commission, and the Equal Employment Opportunity Commission. While currently living and working in Morgantown, West Virginia, Julie is a native of Western Pennsylvania, having obtained her undergraduate degree from Washington & Jefferson College and her law degree from Duquesne University.

You Have to Have it All: An Integrated Model for Business Success: People, Process, Metrics, and a Little More

Joseph R. Bongiovi, bongiovi@live.unc.edu, The University of North Carolina at Chapel Hill

In addition to our functional roles as human resources professionals, we are often charged with being architects of overall organizational success. In that capacity we strive for business leadership. Given the importance of this role, and being able to implement it, leaders frequently seek out simple models. In this article I will look at three ideal models that are process, metrics or people focused. I will discuss them separately, noting the pros and cons of each, and then suggest an interaction model. Before I end the article, I will also touch on two additional integrating, or enabling, aspects of organizational success: strategic planning and cultural alignment. In closing I will pull all of these together into a holistic approach to business success that you can consider in your own work. While the brevity of this article does not allow me to go into detail on all aspects of this approach, I will do so during my presentation at the PHRA conference.

Pittsburgh's Carnegie Mellon is an outstanding university often associated with technical excellence. It also has a world class business school which helps organizational leaders of all types hone their business skills. It was also the leader in organizational studies during the second half of the 20th century. Carnegie Mellon's Herbert Simon, a Nobel Prize winner for his work, and Richard Cyert, helped us to understand the cognitive limitations of organizations. Because participants in organizations cannot be all-seeing and all-knowing, their rational decision-making is bounded by these limits. An important implication of their work was to highlight the need for decision guides, or cognitive shortcuts, for leaders and members of organizations to use in order to be effective given the complexities of the organization.

Given the influence of the Carnegie school of organizational theory, there is little surprise with the prevalence of a process-centric focus. Process orientation helped everyone in organizations make sense of their environment and to be both focused and effective. This became even

more prevalent with the success of Japanese production techniques. Toyota led the way with Toyota Production Systems, which was copied by most successful manufacturing organizations. General Electric broadened this orientation to include leadership processes, putting a heavy focus on Six Sigma. Danaher has taken this approach to a near religious commitment. For many process-centric organizations, this is the primary way that they achieve success. In the most sophisticated of these organizations there is a tool or process to solve nearly every problem or challenge. Nonetheless, as we learned from the Space Shuttle Challenger disaster and more recently from Toyota's own product recalls, that an over-reliance on process can lead to inflexibility, suboptimal results or worse.

In an effort to provide more flexibility in action, some organizations embrace metrics centrism. My most recent employer, Michael Baker, and its owner DC Capital, are very focused on getting the metrics right and using them as a key management tool. In its most aggressive growth years, Pepsico was also extraordinarily metrics and results oriented. Nearly everything that could be measured was. They were also used to manage the firm. At its best, managing through metrics provides a data-based view of the world that is more objective. It is also results focused. In concept it can also reduce micro management, as leaders use metrics rather than a heavy hand, to coordinate activities, recognize and reward. Unfortunately, metrics don't always tell the full story, they can sometimes be manipulated in the short term, and they do not ensure adequate replicability for long term success. At their worst, they risk creating an organization that is backward, rather than forward, looking.

Without rejecting process or metrics outright, startups and organizations in new or highly competitive industries have found those approaches overly rigid and too limiting for their needs. The CEO of the very successful LED lighting

You Have to Have it All: An Integrated Model for Business Success: People, Process, Metrics, and a Little More [cont.](#)

leader CREE, based in the technology hub of North Carolina, told me that process and metrics centrism were too rigid for their fast paced business. He argued that the only way that companies like his could be successful was with a people centric approach. Get the right people in place, give them freedom of action within the context of the overall mission and “test” their ability to get things right. Keep promoting those prove themselves. Help those less fit for challenges find other opportunities. He provided countless examples of leaders in his organization who quickly sized up challenges, brought solutions and took action. That is the only way that it could work in a revolutionary business environment like that. This is becoming more typical of business in an era of accelerated change, and that today’s global challenges are far too dynamic for either a process or metrics centric approach. Only a people centric approach can ensure rapid evolution required for today’s business leadership. Netflix is another well-known adopter of this approach. However, the people centric orientation has its own shortcomings. It does not resolve the issue of scalability as businesses grow. It also begs the question of the best ways to improve the likelihood of individual success short of “natural” talent and “intuition.” The costs of failure and rapid turnover may be too high to leave success to individual talent alone.

How do we reconcile these three seemingly different approaches? MIT Sloan Professor Zeynep Ton offers some insight to this. Hailing from Turkey, Professor Ton earned her Doctorate in Business Administration at Harvard. She first came to the United States on a Pennsylvania State University women’s volleyball scholarship. For those familiar with the programs we can agree she has seen some successful models! Although her focus is on operations and supply chain management, her research informed her that good processes were not enough. Organizations that did not integrate their people and operational strategy inevitably failed, regardless of how state of the art their processes were. She published these results in a very compelling book called “The Good Jobs

Strategy: How the Smartest Companies Invest in Employees to Lower Costs & Boost Profits.” Her conclusion is that the only way for organizations to be truly successful for the long term is to make sure that their operational and people strategies reinforce one another. In other words, people, process and metrics need to be integrated for success. Her case studies include Southwest Airlines, Toyota, Zappos, In-N-Out Burger, Costco, Trader Joe’s and QuickTrip, suggesting this works across industry and location.

I had a similar experience early in my career. I was asked to be part of a cross functional leadership team that was sent to an international location to turn a business around. It was a retail business with failing customer service and profitability. In spite of having the highest per store average sales in the entire company the business lost money. We knew we needed to focus on the people dimension of the business, while also getting the right operational processes in place. If we did that we believed that the quality, service and profitability problems would be solved. We communicated that to the team. They wanted to know where we wanted them to focus. In that case we had to do it all of these things simultaneously. We did, and we succeeded, returning the business to profitability and market leadership in nine months!

The examples from Professor Ton, in my career and likely many of yours, suggest that process, people and metrics cannot do all of the heavy lifting on their own. I therefore add two other dimensions to this triad: Strategy and culture. These form the superstructure that the other factors need to fit into. It is only when these five components align that organizations can be optimally effective. But, how can this be done? Larry Bossidy and Ram Charan’s classic “Execution” gives us some clues in practice. In their rendition, strategy links to operational execution through good human resources/ people practices, which they refer to as the vital link for organizational success. They also discuss the importance of measurement, as well as a culture of candor, which they refer to as the willingness to address difficult challenges head on.

You Have to Have it All: An Integrated Model for Business Success: People, Process, Metrics, and a Little More [cont.](#)

In this short article I have attempted to outline to relative merits of three approaches to running an organization: Process, metrics and people. While leaders will often focus on one over the other I have argued that it is only in a balanced approach between the three that organizations can be optimally successful over the long term. While this provides an architecture for success, it is still lacking two important aspects to bring it to full potential: Strategic planning and an aligned organizational culture. Enlightened and business oriented human resources leadership is critical to managing these five aspects of organizational architecture and linking them together. I will discuss more about how to do this at the PHRA conference in October. Until then, I hope that this article has provoked some reflection on the role that you can play in helping your organization be optimally effective in our dynamic and challenging environment.

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The Pittsburgh Human Resources Association offers many valuable networking and education programs throughout the year. Keep an eye on the PHRA online event calendar for a complete and up-to-date listing of all programs. Register for an upcoming event today!

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12 noon - 1:00 p.m.
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Practical HR Strategies for Building Organizational Success: Conclusions, Lessons Learned, and Recommendations

Day Two Opening Keynote:

Joseph Bongiovi, Executive Vice President and Chief Human Resources Officer
An Integrated Model for Business Success: People, Process and Metrics

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