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EHRN Update

We are happy to release the third edition of the EHRN Newsletter. Thanks so much to all the contributing writers for their hard work and continued support. And thanks to the EHRN members who referred writers to us, some of who are first time contributors in this edition.

On page 5, there is information about a very important local organization called Hollywood Arts, who provides internships and employment opportunities for homeless youth and emancipated foster children.

At the Rubicon on April 26 there was a presentation on the topic "Social Media Effectiveness: How to make It Work in Recruiting Top Talent." The guest speakers were Joyce Yoo, Director of Digital Strategy in LA Social/Digital, presenter from TMP (world's leading recruitment advertising agency). And Andrea Dundas, Disney's Social Media Recruitment Ecosystem, which she presented at the LinkedIn Talent Connect conference last year. She will be presenting on a similar topic at HCI in New York in May.

Thanks to all who attended and for their great questions and active participation.

We will keep you posted on future events and will get back to you with some ideas on what the EHRN group will do next.

We hope you enjoy the articles and information in this newsletter! Please send us your ideas and comments.

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Employability vs. Career Paths: LET'S GET REAL

By Al Adamsen



People want clarity. Clarity breeds confidence. Confidence allows one to focus on the task at hand, as opposed to wondering whether or not that task is going to get them to where they want to go. So it is with the notion of “career paths.” Organizations have put together “career paths” with the idea that if employees understand where they can go, or will even likely go, then they’ll be more confident and self-assured. They’ll stay present, engaged, and committed to the organization, thus the investments the organization has made in them will be relatively safe. The risk of losing that person, that

investment, will be lower. The logic, for the most part, is sound, or at least seemingly so. What’s lacking are these four simple facts:

Organizations are dynamic over time. They change. As soon as a career path is put in place, it ages. It’s relevance, its connection to reality, diminishes. Also, if an organization isn’t growing, new opportunities aren’t emerging. If it is growing, then opportunities present themselves and career paths *might* have some relevance.

External environments change over time. The external opportunities available to employees are constantly evolving, as is the appeal of these opportunities. Employers cannot control this, yet they can be aware of these changes and respond accordingly. Better yet, they can evolve with or in front of the market and create an employee value proposition that’s consistently more appealing than other employers.

Individual needs and desires change over time. As we all know, individuals enter and exit different life stages. These stages are not clear, they’re not consistent, and they’re not predictable, at least on an individual basis. Stages include young independent professional, married, married with young children, married with young adults, divorced with kids, married and caretaking parents, etc. These stages, and the demands they place on individuals, do not align with roles or future roles. Similarly, an individual just might want to do something different at some point, and this is rarely predictable.

There are only so many opportunities. Within a particular organization, even a growing organization, there will be only so many opportunities to move up or even across. This is true if the organization has many layers, if it’s flat, or even if it has the habit of restructuring. The exceptions, of course, are hyper-growth companies, many of which have received a great deal of press. Most companies, however, will only have a very small percentage of leadership roles come available over time relative to the total population, or relative to high potential pools for that matter. And leadership roles, in most career paths, are the “end state.” They’re the goal. (Note: Increasingly the goal might be a high-level small group lead or individual contributor role. While becoming more popular, these roles too are few, in percentage terms, when compared to most employee populations or high potential pools.)

So, what to do? The answer is simple, yet it takes reflection, and often a paradigm shift to accept. In turn, it takes confidence and courage to act upon. The answer is to help make staff more valuable, more employable, inside and outside the company. “You mean, train staff, our staff, to be more valuable, thus ‘poachable’ by our competitors?” Yes, that’s exactly what I’m saying. “Why would we do this? It doesn’t seem to make sense.” Actually, it does make sense. It makes perfect sense, both from the individual’s perspective as well as the organizations. Also, as important as anything, it’s reality. Even if you, as a leader, don’t adopt this mindset and institute this approach, it’s happening anyway. Your staff becomes more valuable just by being with your organization. The question is, “Are they becoming more valuable over time faster than your competitors are making them more valuable?”

For example, let’s imagine two identical workers are hired at the same time, into nearly identical roles, at two different companies. Let’s imagine these companies too, are very similar: same industry, size, geography, etc. Now let’s fast-forward five years and bring in a third company. This company wants to hire

a Director and both workers have been contacted and offered themselves up as candidates. This role will represent a promotion and more money and responsibility for each. As the interviews unfold it becomes clear that both are qualified, yet one is notably more desirable than the other. She’s perceived to be more valuable. An offer is made to that individual. The offer is turned down. The offer is made to the other individual. It is accepted. Why didn’t the more valuable worker accept? Why did the other accept?

Now while they’re a host of variables that can be introduced into this scenario, the point to be made is this: The more valuable worker became more valuable during the time spent with her company. Remember, they started off identical. This could have been due to the nature of the job, her supervisor, leader communications, training, group collaboration, organizational culture, or other factors. Whatever the factors were, they enabled her to gain the skills, behaviors, knowledge, etc. that made her more valuable in the open market. So why would someone like this stay when offered a “better” job?

Let’s go back to where we started. People want clarity. Put another way, they want to see the future that will likely come into being. They want predictability. People are comfortable with what is known. This reduces anxiety and increases self-confidence. In this case, what is known, what is predictable for the more

valuable individual, is that her current company will continually enable her to grow and develop – to continually become more valuable. By definition this means she will be challenged to learn and improve. This relates to another cornerstone of what people want: uncertainty. Uncertainty is where growth occurs. It’s where the new and exciting happens. She chose to decline the offer and stay because her employer was meeting her current needs and she was confident it would meet her future needs as well.

With the other worker, she lacked similar confidence in her employer, at least in comparison to the courting company. Her learning and growth opportunities lied with it, despite the uncertainty.

To wrap up this scenario, both individuals may or may not have been on a company designed career path. It didn’t matter. What mattered

was the fact that both became more valuable. They were both in a position to take advantage of emerging opportunities. As are identified in career paths, some opportunities will be internal. Others will be external, and these are rarely identified in career paths unless done by the individual him or herself. The individual, of course, will ultimately decide which ones are best for them. As employers, we need to accept this reality and help employees clarify where they want to go and how best to get there. In doing so we’ll increase their confidence that they’re in a place that accepts and appreciates them for who they truly are, as opposed to the individuals they “should” be to suit the company.

In summary, the notion of career paths, while well-intended, doesn’t get to the core of what employees want and need, nor does it get to the core of what organizations want and need. The good news is that these energies can be aligned in a way that benefits both the individual and the organization. It’s around the idea of helping employees elevate their employability, of helping them be as valuable as they can be over time, then constantly competing for their services. It’s a paradox that one of the best ways to win that competition is by continually helping them be more valuable. Yes, they become more attractive to competitors, yet they also become more attractive internally. What’s as important as anything is that they become more attractive to themselves. They become more capable, more prepared, more employable. This lays the groundwork for confident employees, ones who are assured that their employer is the best place to be in the present in order to achieve their goals for the future. Such confidence, in turn, frees their energy so they can be highly focused, engaged, and productive contributors to the organization.

For additional information on Al Adamsen and workforce analytics, please visit www.PeopleCenteredStrategies.com.

Making Effective Counteroffer Strategies

To Retain Key Employees Who Give Notice

By Paul Falcone



After four years of economic malaise since the Great Recession of 2008 and mortgage meltdown caught many of us by surprise, a robust job market may not be far off, and we may just find that some of our best and brightest are being tempted to jump ship for new opportunities at other studios or even in other industries. When a key employee's resignation hits your desk, it may be time

to consider the pros and cons of making a counteroffer.

Don't get the wrong message: Counteroffers, generally speaking, should not become common practice in terms of your employee retention strategy. The primary reason is because once employees go through the mental separation process of terminating themselves from an organization, an attitudinal break may occur that can't readily be overcome. In addition, appearing to throw dollars at people to stay aboard once they've committed themselves to another employer could be perceived as a desperate move on the company's part and poor career management on the individual's part. Ask any headhunter if counteroffers work, and they'll quickly tell you that in a majority of cases, employees who accept counteroffers will be gone within six months nevertheless.

That being said, there are times when a counteroffer may make sense in terms of dealing with employees who have tendered notice. The key lies in knowing how to structure the counteroffer to help individuals reconnect with the organization and reinvent themselves in terms of acquiring new skills and opportunities. If your reason for wanting to counteroffer an employee to stay with your company is solely for your own benefit, then the counteroffer probably won't work. Even if the individual were to accept the counteroffer, the selfish motive underlying this tactic would show itself in no time. In short, although you may have delayed the individual's decision to leave, you wouldn't be in a position to better the individual's career development in your company because your focus would be on your own needs rather than hers.

In contrast, a counteroffer has to stem from a genuine concern for your subordinate's needs. Money is important, but it's a less important component than individuals' perceptions of their own career growth and development. When faced with a counteroffer situation where you have a genuine selfless interest in retaining the individual and believe you still have lots to offer in terms of their professional growth and development, then craft a message that shows how much you truly value the person even if you have little to offer budget-wise that could compare with their current employment offer from the outside company such as:

- A renewed career development strategy that includes new areas of responsibility, staff oversight, or exposure to areas of personal interest
- A commitment to formal education, such as a UCLA Extension two-year marketing certificate program
- Opportunities to travel more frequently to the corporate HQ office to build new relationships and strengthen existing ones
- Involvement in a mentoring program with a respected senior leader
- A reminder of the individual's nearness to being vested in the 401(k) or company pension plan (if applicable)

This broader approach to career building will also help your company avoid the number one error that organizations make when engaging in counteroffers: assuming that money alone is the issue. Many a disgruntled "counterofferee" has walked away from a current employer's insincere attempts at keeping the individual on payroll by responding: "They just don't get it. Why are they throwing money at me now? If I'm that good, they should've offered me that money two years ago. They always cry broke, but all of a sudden they can find \$25,000 in the budget to get me to stay. No thanks . . ."

Even if your proposed counteroffer doesn't meet the terms of the external company's offer, your respectful, selfless, and well thought out counteroffer strategy will certainly offer you an opportunity to retain this individual. Even if you're not successful, you can at least rest assured that word will get out that you handled the whole matter professionally, that you put the individual's career interests above your own needs, and that you were very "cool and classy" about the whole thing. The outcome may be beyond your control; the strategy that you employ, however, will make you feel good personally and distinguish you as a true leader within your company.

As the economy picks up, your organization will no doubt feel the pinch of the rotating door. Expect it, and more importantly, be prepared to execute a strategy to keep your key players in place. As a matter of fact, you might want to take the time now to consider who those key players are and then run through a table-top exercise of what your company would do to keep them should they ever give notice. You might find that a proactive conversation about an individual's career needs at this point – before anyone gives notice or threatens to leave – could help you fend off the counteroffer dilemma in the first place.

Paul Falcone is the best-selling author of [96 Great Interview Questions to Ask Before You Hire](#), and you can find career development and effective hiring articles on his blog at www.paulfalcone.org.

What To Do (and Not Do!) With Computers and Mobile Phones When An Employee Terminates

By Glenn J. Dickinson



A recent study showed that approximately 70 percent of business documents are never printed on paper. We live in the Electronic Age, and every business is buzzing with gigabytes of data. The prevalence of electronically stored information (ESI) presents great challenges, and opportunities, when you are terminating a problem employee. But you have to know what you're doing.

Take the typical case of an employee with performance issues and conflicts with coworkers. The

decision to terminate the employee could make business sense, but the experienced manager knows that termination is often a goad to litigation. Electronic evidence could be useful in defending against that claim. Another common scenario involves a sales person who resigns to go to work for a competitor, and then starts poaching customers. While lawful competition is allowed, the picture changes significantly if the sales person surreptitiously downloads confidential customer information to a flash drive before departing. That is unlawful misappropriation of trade secrets, and evidence of these acts can help the company obtain an injunction and damages.

Here are some important rules to follow when you are facing the prospect of litigation against an ex-employee. These rules don't apply to every employee who leaves, but they certainly apply to any employee who could be a future litigant.

Locate the Evidence

ESI can be found in numerous places, and each of these locations should be considered:

- Work station or laptop computer
- Mobile phone
- Phone call and text message logs maintained by the mobile phone service provider
- Email mailbox on the company's email server
- Session logs on the company's remote access or virtual private network (VPN) facility
- Office alarm system logs showing after-hours entries
- Upload and download logs from the company's FTP site

Some of these sources are outside the company's direct control, so locating the evidence can be a complex task.

Preserve the Evidence

Any fan of TV crime dramas knows that only the professionals are allowed into the crime scene; otherwise, incriminating evidence could be contaminated. The same principle applies to computers and mobile phones. After an employee is gone, someone usually wants to pore through these devices to see what's on them, for legitimate reasons or just

out of curiosity. But opening files and reading emails can ruin their evidentiary value. For example, suppose a departing sales person views files relating to a dozen key customers on his last day on the job, and then sends proposals to those customers when he moves over to his new company. That's highly useful evidence in a subsequent trade-secrets action. But, if someone later comes in and opens those same files, then the "Last Opened" date is altered, and the evidence is destroyed. So view the computer and the mobile phone as crime scenes; don't go wandering in without first checking with counsel or a forensic computer examiner.

This is not only a prudent strategy; it's a legal requirement under federal law. Any party involved in a dispute that could result in litigation must take reasonable steps to prevent the deletion or alteration of ESI. Failing to do

so can have serious consequences; in some cases, judges have instructed jurors that a company allowed the destruction of relevant evidence, so the jury can find the company committed wrongful acts and then intentionally or negligently covered them up.

The first and most important step is to secure and lock down the electronics. Just turning a computer on will alter hundreds of files, so don't do it. If you need access to the device, then a forensic copy of the hard drive should be made by a qualified forensic computer examiner.

Employees who use company computers generally have user accounts, email mailboxes, and user profiles on the company file server. Many businesses routinely delete those individual accounts when the employee terminates. If a dispute is possible, then those routine procedures should be suspended. Likewise, archival and backup storage media are frequently re-used, and

older backup copies are overwritten with new data. But a snapshot of the company's email or file server could contain relevant evidence, so those storage devices should be preserved while the dispute is pending.

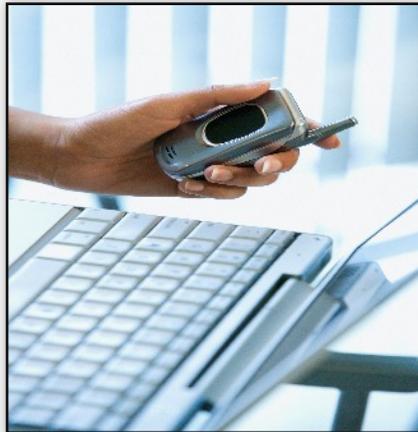
Pre-emptive Steps

Locating and preserving evidence is much more difficult when employees use computers and mobile phones that they own. You can't require departing employees to give you their devices. If they don't cooperate, then it can take a court order before you can examine and copy that data. So make sure all laptops and mobile phones are purchased by the company, and that wireless service is provided under an account in the company's name.

Many parties in litigation still do a poor job of preserving ESI. Those who are prepared can gain significant advantages, and avoid some disastrous consequences.

Glenn J. Dickinson practices in the areas of trademark, copyright, Internet law and competitive business disputes for the law firm LightGabler. His practice covers both litigation and transactional matters. He has trial experience in a variety of complex business disputes, particularly those involving trade secrets and unfair competition.

You can reach Glenn at gdickinson@lightgablerlaw.com.





Directly Impact Your Community and Company with an Innovative Internship Program

Since its internship program began, six Hollywood Arts students (emancipated foster youth/homeless young adults) have had successful paid internship placements with partners such as Comcast at E! Entertainment Television, the Style Network, G4, and NBC Universal as well as The Second City, and Squeak E. Clean Productions. Two thirds of these are currently employed by their former intern hosts.

Students become eligible to interview for paid internships after successful completion of the Job Readiness Program. Hollywood Arts interns are provided monthly bus passes and cell phone services for the duration of their internships.

If your company is interested in hosting a Hollywood Arts student for a 12 week paid internship, please contact Executive Director Rachel Romanski by telephone at 323/896-7275, e-mail rachel@hollywood-arts.org, or go to www.hollywood-arts.org.

Managing Stress in the Workforce

Interview with Sarah Taylor



Sarah Taylor has been in the holistic health field for over 18 years, helping people relax, de-stress and feel more whole. As a massage therapist and meditation teacher, she excels at helping people from all walks of life to enjoy the benefits of body and mind awareness. Through meditation, Sarah guides people in learning how to wrangle their wily minds so that they can live and work more authentically and creatively. Through massage, she assists in loosening and unwinding the knots that can keep people from performing at their best.

Sarah answers questions on meditation and massage therapy for the LAAHRP Newsletter.

1. How can your teachings and practices in the areas of massage therapy and meditation help the modern workforce to adapt to what has been recently described as generation flux?

Change and uncertainty is stressful. And the world is changing at a more rapid pace than ever before, appearing more chaotic and demanding that we adapt constantly. So the more we can create a solid foundation for ourselves, the more we can roll with what happens and we can think on our feet in a relaxed, focused and fluid way. We turn our attention so much on what's "out there", that we lose track of what's going on inside us...until our bodies start to tell us something is wrong in the form of tension, illness and burnout.

Meditation and massage help us cultivate more awareness about our bodies and minds. We start to learn how we tick, what our triggers are, and how to thrive. Stress begins in our minds - with how we perceive and process challenging situations - and ends up expressing itself in our bodies in the form of aches, pains, knots, tension, headaches, illness, injuries, etc. Regular meditation and massage helps our minds and bodies stay strong, focused, flexible and ready to try new approaches, which is invaluable in today's modern workforce.

2. What do you see as the root causes of stress in the workforce or just stress in general?

People's inability to make self care a priority and the way our minds run away with us. We're in a society now where everyone seems to have ADD on some level! Not that I'd like to see a world without Twitter. But our focus is all over the place. We're scattered in many places at once and so it's difficult to bring ourselves fully to whatever is in front of us, whether it's a project that's due at work or a dinner we cook for our family. We have to juggle a lot of plates at once, yes. But it's about how we're doing it. These days we seem to be less mindful and more mindless. This depletes us. We burn out. Knowing how to focus, relax and become mindful is crucial. In doing so, we spend less time putting out fires and more time building lives that nourish us, rather than deplete us. Finding the value in such a thing is paramount.

3. Can you tell us your philosophy in regards to wellness, stress reduction and mental health?

We must value ourselves and our self care. Our mind and body is all we have, really, and we need both to be strong, relaxed and flexible. Challenging situations aren't going anywhere. We're not going to wake up one day and find that our outside circumstances are perfect. Traffic will still exist! But we can learn new ways to hold our lives and its challenges, eventually embodying healthier, new ways of being. But that can only come from self awareness and regular self care.

When a stress trigger occurs, we immediately create a whole slew of thoughts, scenarios and identifications with what's happened. This stresses our nervous system and we end up performing less effectively.

We've got to learn how to slow down that train! This is vital in a fast paced work environment and meditation practice helps with this immensely. We think we need to speed up, but actually we need to slow down. Learning to focus and relax, as well as how to work with our patterns, helps us think clearly and respond creatively and powerfully. Slowing down for even 10 minutes can actually help you be more effective the rest of your day.

4. What types of companies have you worked with in the past? When companies or clients reach out to you, what are they hoping you can do for them?

I've worked for a lot of trailer houses, graphic design companies, animation houses; usually creative businesses. Businesses will hire me to give employees 15 minute massages once or twice a month as an ongoing wellness plan, or they'll have me come in as a gift to the employees - for birthdays, a job well done. Companies that hire me to teach the basics of meditation have a long term wellness goal and usually combine my meditation teaching with massage, so that people are learning to improve how both their bodies and minds process stress. These companies are hoping to not only boost morale and create a positive work environment; they understand that massage and meditation provide a foundation for their employees to perform in top shape.

5. For companies that may be interested in your services and teachings, what would you like to say to them? What would you like them to know about massage therapy and meditation?

Meditation and massage can transform the workplace. Employers are learning the value of a relaxed and focused employee - they're healthier, happier, more creative and better team players. By helping your employees learn better ways to care for themselves, you're caring for your company's future.

Sarah Taylor offers effective and enjoyable wholeness/wellness plans that include massage and meditation instruction to companies and individuals in the Los Angeles area. You may reach her at sarah@sarahtaylor.org.



“Are You Free for Lunch?”

Long-Awaited Brinker Case Decided by California Supreme Court

by Karen Gabler



California employers have long been burdened with the obligation to enforce meal periods for employees within five hours of starting their shifts. Meal periods that are missed, late or shorter than thirty minutes (even at the employee's request) have resulted in endless class action litigation and substantial monetary penalties to employers. Employers and employees alike have expressed frustration with the lack of flexibility afforded with regard to work and break time.

On April 12, 2012, the California Supreme Court issued its long-awaited decision in the case of *Brinker Restaurant Group v. Superior Court of San Diego*, addressing meal and rest period requirements in the workplace. As hoped, the decision provides some measure of relief to employers, but requires employers to remain diligent about policies, practices and documentation to protect themselves from prospective employee claims.

Meal Periods: "Provided" or "Ensured"?

In line with a growing number of federal court decisions on this issue, the Supreme Court noted that "an employer must relieve the employee of all duty for the designated period, but need not ensure that the employee does no work" in the thirty-minute span of time allotted for a meal break. This means that an employer must provide, but need not enforce, a timely meal period to its employees.

The obligation to "provide" the meal period is satisfied if the employee is relieved of all work duties for a period of at least thirty minutes and is free to leave the workplace. Once the employer has "relieved the employee of all work duties," the employee may choose to use the meal period for any purpose he may choose, including to perform work-related tasks.

This decision, however, does not relieve an employer of the duty to pay wages (either straight time or overtime) to employees who personally elect to work through their meal periods if the employer "knows or reasonably should have known" that such work was occurring. Instead, it merely relieves the employer of having to pay the one-hour penalty if the employee chooses to work during the meal period. Presumably, this also means that the employee could voluntarily choose to skip or shorten his meal period without resulting penalties to the employer.

The first thirty-minute meal period still must be provided to the employee after no more than five hours of work. After no more than ten hours of work, the employer must provide a second thirty-minute meal period. The Court clarified, however, that there is no "rolling" five hour period; in other words, once the first meal period has been taken by the employee, there is no obligation to provide a second meal period until the employee has worked ten hours (even if the employee has worked more than five consecutive hours after the first meal period). This means that if an employee working an eight hour shift takes an early meal period during the second hour of work, then returns for another six hours of work, there is no obligation to provide a second meal period during that six-hour stretch.

As suspected, the issue created by this ruling will be: what does it mean to provide a meal period? Judging by the Brinker decision, any pressure by the employer upon an employee to perform job duties during a meal break or to skip or shorten a meal break will be viewed as a violation. Examples of such pressure would likely include a scheduling policy that makes it difficult to take meal periods, informal (or formal) pressure, ridicule or reprimand toward employees who do not perform any work during their meal breaks, or other methods of incentivizing or encouraging the skipping or shortening of meal breaks.

Ultimately, the decision does nothing to prevent employees from claiming that the meal period was not "provided" to them, and the one-hour meal period penalty remains in place for meal period violations. Despite the good news for employers found in Brinker, employers must remain vigilant to protect themselves from meal period claims.

Rest Periods: When Do Employees Get a Break?

Confirming what we already knew, the Court noted that once an employee has worked at least three and one-half hours, he must be provided with a paid ten-minute rest period for each "major portion" of four hours worked." The Court analyzed the meaning of "major portion," and determined that (1) employees working between three and one-half hours to six hours must receive one rest period of ten minutes; (2) employees working shifts from six hours to ten hours must receive two rest periods of ten minutes each; and (3) employees working shifts from ten hours to fourteen hours must receive three rest periods of ten minutes each. The distinction to note is the difference between a "work shift" and a "period of work": an employee who takes a rest break thirty minutes into a six-hour shift is not entitled to another ten-minute rest break after four and one-half hours of work.

The Court also opined that it is not necessary to take meal or rest periods in any particular order, presumably clearing the way for an employee on an eight-hour shift to take a meal period within the first two hours of work and then take two additional rest periods during the next six hours of work. The Court did state, however, that in a typical eight-hour shift where two rest periods would be provided to the employee, one rest period should be taken prior to the meal period and one after the meal period "as a general matter."

So, What Do We Do Now?

It is certainly beneficial to employers to be able to avoid payment of meal period penalties to employees who refuse to comply with meal period requirements. Employers and employees also will appreciate the additional flexibility implied by the Court's decision. However, notwithstanding the hype leading up to the Court's ruling, the Brinker decision boils down to "keep doing what you've been doing" for most employers.

Our suggestions for next steps include:

1. Work with employment counsel to implement clear written policies (with employee acknowledgements) informing employees that they are entitled and expected to take an unpaid thirty-minute meal period after no more than five hours of work, and a second unpaid thirty-minute meal period after no more than ten hours of work. Note their right to complain (without fear of retaliation) about any pressure exerted upon them not to take such meal periods.
2. Require employees to record the time taken for meal breaks to demonstrate that they did so (or knew that they could do so but chose not to on any given day) and to record any time worked during the pay period so that they can be paid applicable straight time or overtime rates for their work.
3. Work with employment counsel to clarify policies regarding rest periods. Make sure your rest period policy does not reference a ten-minute rest period "during every four hours of work."
4. Discipline employees who violate company meal and rest break policies (including supervisors who discourage employees from taking their breaks).

Employers would be wise to review and update their meal and rest period policies and time card certifications with legal counsel, to ensure the utmost flexibility for employers while maintaining compliance with the new ruling.

We will discuss the Brinker ruling, necessary policy language, potential new pitfalls for employers and related wage and hour issues at LightGabler's HR Management Strategy Roundtables next month. Mark your calendars for Tuesday, May 8 in Oxnard or Tuesday, May 22 in Simi Valley, 7:30 to 9:00 a.m. Further information regarding these programs will be listed on our website at lightgablerlaw.com.

Karen Gabler is an employment attorney at LightGabler LLP. She represents employers and management in all aspects of employment law advice and litigation. See LightGablerLaw.com for Karen's legal updates, articles and seminars.

Overcoming a Culture of Fear

By Drew Kugler



An employee has come to HR with a complaint that one of the company leaders yelled at them in front of several employees in a meeting. The employee is unwilling to approach this company leader to complain about the insensitive behavior. How should HR counsel this employee, who is looking for HR's advice on what to do?

It depends on what the HR professional believes the outcome should be. My view is it that the best organizations instill the practice of respect and trust in the conversations that take place in them. Hard conversations like this one can prove to be a defining moment for what the culture stands for.

In the face of something like yelling, the chances are high that both the HR professional and the employee know what the most respectful and trust-building things to do are. Problem: that knowledge gets lost in the cloud of fear that the employee and, often, the HR professional feels about engaging the company leader in any sort of conversation about what happened. Factually, no one will change their behavior unless they get feedback that encourages them to do the changing. The unfortunate cost of the employee's unwillingness is that it makes the yelling not only acceptable, but by omission, reinforced as a viable means of communicating.

To advance the respect and trust, the employee could invite the manager to a conversation and be prepared with some questions designed to analyze what happened that so obviously displeased the manager. The employee should, counter intuitively, seek feedback from the manager with the expressed goal of eliminating future outbursts. "The meeting clearly didn't go well; ...what suggestions do you have for next time that could make it go better?"

HR's involvement has two parts here: 1) As a coach to the employee on the why and how of this conversation (in that order). The employee needs to be both encouraged as to what can be accomplished with the right conversational strategy and then educated to execute it. 2) If the leader's

behavior continues, as an advocate for the culture and success of the business, by clearly noting the concerning patterns to the executive. One outburst can be rationalized easily to a "bad day," yet any sort of pattern beyond that must be assertively discussed.

Be clear about this as you decide what to do. A pattern of abusive behavior on anyone's part endangers not only the culture's trust, respect, and morale level, but conceivably the safety of your workplace. The HR professional has the potential (and, I suggest, the obligation) to show real leadership by inviting the company leader to reflect on their behavior. Here it should be strongly suggested that, when they are seen as abusive their credibility and executive effectiveness is damaged. Not only in the abusive moment, but during the whispered telling of the stories after, and in the fear as employees encounter them. It can be pointed out that these days, there is too much work to be done with fewer and fewer people. Yelling is, in many ways, far too costly.



The real moment of truth then presents itself. How the executive reacts to the feedback will speak volumes to what to do next. As long as the HR professional can remind themselves that their leadership is exercised most actively through challenging conversations, they should expect emotions ranging from defensiveness and anger to possible embarrassment to recognition. Keeping the lens focused on the vision of trust and respect will prepare the professional to respond with a blend of listening, empathy, and firm resolve.

As humans, we are conditioned to run and hide from perceived threats to our survival. When confronted by workplace bullies, that natural tendency to turn away, while understandable, lessens us and emboldens them. Is that the place, especially in Human Resources, you want to contribute your intelligence, your heart and your time to? Or do you want to make things better? As much as anything else written here, that answer can guide you what to do.

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"No SOPA for You"

Why SOPA Led to Such An Acrimonious Fight and What We Can Learn From It

By
Jesse Saivar



We've recently been treated to a very public fight involving two widely-popular, well-funded industries seeing who could outdo the other with brazen, self-interested rhetoric. SOPA was either painted as a valiant attempt to shut down Russian mafia-funded, off-shore pirate websites that put hard-working key

grips on the streets or a dictatorial censorship vehicle that would end the Internet as we know it. The dust has now cleared and the anti-SOPA team has pre-vailed, at least temporarily. Even though we know the winner of this most-recent scuffle, it is important to understand the purported purpose behind SOPA and where it went wrong because this issue likely isn't going anywhere.

SOPA (and its cousin PIPA) were an attempt by Congress to combat piracy. While the threat may have been overstated, there's no question that piracy and file sharing are rampant and are severely eating away at profits. Back in the day, the majority of copyright enforcement in the film industry involved nabbing the sketchy dude in the movie theatre with a camera lens sticking out of his jacket. Now there are pirate sites popping up every few minutes. While content-owners have the legal right to take action, litigation isn't easy, quick, or cheap nor is it feasible to institute actions against each of the myriad of infringers that may exist.

At its core, SOPA was an attempt to place a tourniquet on lost profits, making it easier to go after and punish infringing sites. Unfortunately, the legislation's language went beyond the innocent and unobjectionable goals touted in the pro-SOPA rhetoric.

SOPA contains two key provisions. Section 102 grants certain rights to the Attorney General to combat against "foreign infringing sites." From a legal perspective, this section is the least controversial because it requires action by the AG and a court proceeding before action is taken. While the anti-SOPA crowd hated that it may force internet service providers and search engines to wipe the infringing sites from the internet, there should be some comfort knowing that there would be a preliminary finding that the sites were engaged in criminally infringing activity.

The problems, from a legal perspective, are contained in Section 103 - the "Market-Based System." Under this section, content owners have the right to take action against sites "dedicated to the theft of U.S. property" by serving notice to payment service providers and advertising services obligating them to cease doing business with such sites. No initial court proceeding is required.

Worse yet, the targeted wrong-doers were so vaguely defined that it could easily have included popular U.S.-based sites like YouTube.

Opponents of SOPA argued that the legislation would have required sites to police content uploads in order to avoid falling under the definition of a site "dedicated to the theft of U.S. property." Costly and time-consuming, many argued that sites would instead simply shut down. If they didn't shut down, they may have their financial lifeblood ripped from them by a self-interested entity without a court proceeding.

On its surface, SOPA was a severely flawed attempt to combat a real problem. From a cold legal perspective, it wasn't as malevolent, or as valiant, as the respective sides' rhetoric made it out to be. It did, however, raise questions about each sides' intentions.

The first is whether SOPA was simply a poorly-executed attempt to stop piracy by the entertainment industry or whether it instead constituted a shot across the bow of the Internet industry. While everyone clearly hates pirates, the entertainment industry also isn't keen on the lesser, and more popular, offense of posting clips or user-generated content involving films or music. If SOPA had been quietly signed into law, it may have given the entertainment industry the legal ability to go after the YouTubes of the world, a right it doesn't currently have.

The second question is whether the vehement anti-SOPA camp was only targeting the overreaching language of this specific bill or if it was instead attacking copyright law in general. Many of the internet giants opposing SOPA have been pushing the boundaries of copyright law for years. For those who described SOPA as a censorship vehicle simply because it doesn't allow users to "share" copyrighted content with other users, the issues run far deeper than statutory interpretation.

SOPA is only the first high profile battle in what likely will be an ongoing war between two industries with a lot at stake. The key to understanding the issues will be to drown out the excessive rhetoric sure to continue from both sides and to focus on the ultimate, and probably unstated, goals both sides are truly pursuing.

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Employee Engagement

By Nick Stein



Google's corporate headquarters in Mountain View California, the Googleplex, is legendary for its perks. Employees have access to unlimited free meals, haircuts, dry cleaning, massages, and even onsite medical care.

Yet when Google interviewed employees about what they valued most at work, none of these extravagant benefits made the top of the list. Neither did salary. Instead, employees cited access to "even-keeled bosses who made time for one-on-one meetings, who helped people puzzle through problems by asking

questions, not dictating answers, and who took an interest in employees' lives and careers."

Lack of engagement at work has reached epidemic proportions. A recent survey of 90,000 workers in 18 countries by Global HR consultancy Towers Watson found that 79% of people were *not engaged in or actively disengaged from their work*.

But what exactly does it mean to be engaged? Global consulting firm BlessingWhite defines employee engagement as a combination of maximum job satisfaction ("I like my work and do it well") and maximum job contribution ("I help achieve the goals of my organization").

Keeping people engaged isn't just good for building culture and morale. It's also good for business: the Towers Watson study found that corporations who engage their employees enjoy greater earnings growth and larger profit margins than those who don't.

One reason for this is the enormous cost of replacing star performers. The *Wall Street Journal* calculated that it typically costs a company about half a position's annual salary to recruit for that job and several times that if the position requires rare skills.

Keeping talented employees on board has always been important, and don't think that economic uncertainty will keep them around indefinitely. Your company has worked hard to recruit some bright people and great talent; make sure an opaque work environment doesn't drive them into the arms of your competition.

So how can your company keep its stars engaged? It comes down to creating a culture of communication and collaboration — one in which employees know where the organization is headed, how they fit into these plans, and what's expected of them. Here are a few key strategies you can employ to make this happen.

1. Get people aligned around a common mission

Often, chief executives start out with a clear mission, but have difficulty translating it to the rest of the organization. As a result, individuals have little sense of how the work they do everyday impacts the larger objectives of the company.

In their landmark study on employee engagement, BlessingWhite concluded that *"aligning employees' values, goals, and aspirations with those of the organization is the best method for achieving the sustainable employee engagement required for an organization to thrive."* Indeed, when McKinsey surveyed and assessed organizational performance, they found companies in the top quartile for setting clear goals, holding people accountable for performance, and providing an open, feedback-oriented environment were more than two times as likely to be in the top quartile for financial performance.

2. Create a culture of education

The average Starbucks barista gets more training in a year than the average employee in a communications company, according to a study by advertising

agency Arnold Worldwide. For employees, the single most important motivational factor was the ability to learn. Yet the study found a huge disconnect when it comes to perceptions about company training. While 90 percent of employees say they learn by figuring things out on their own, only 25 percent of executives think that employees learn independently.

To keep employees motivated, companies need to build a culture of learning, where employees leave more enriched at the end of each day.

3. Provide regular, consistent feedback

Employee feedback is a critical part of the education process, and shouldn't just be relegated to the annual review. To be effective, feedback needs to be specific and actionable. But that's not always how it works.

In a study by Leadership IQ, 53 percent of employees said that when their boss praises excellent performance, the feedback does not provide enough useful information to help them repeat it. And 65 percent responded that when their boss criticizes poor performance, it doesn't provide enough useful information to help them correct the issue.

Think of it this way: no one wants to go a full day knowing their price tag was hanging from the back of their shirt, or the remnants of the salad they had for lunch were still stuck in their teeth. If an employee does something well, that activity should be encouraged. And if there's room for improvement, they should be given the opportunity to learn for their next task.

4. Set time aside for weekly 1:1 meetings

At first, most employees and managers will cringe at the idea of yet another meeting. But instituting weekly 1:1 meetings can be the most important step you take to retaining your top performers.

In its quest to build a better boss, Google discovered that its worst managers weren't consistent in their 1:1 meetings; some focused on meeting with people who were under performing, while others met primarily with the top performers.

Consequently, Google implemented the best practice of 1:1 meetings with **all** team members. These meetings can cover anything and everything from upcoming projects to the latest client news. With each week, discussions about goals, feedback, and concerns become a lot more natural unlike the awkward, starchy conversations during annual reviews. Over time, it becomes easier for both sides to raise potential problems and deal with them early on, before they fester into something destructive.

5. Publicly acknowledge great work

All too often, managers see motivation in terms of financial compensation, but money is far from the only way to effectively reward talented employees. A 2009 survey by *McKinsey Quarterly* asked which incentives were the most effective in motivating employees. The top two responses were: "praise and commendation from an immediate manager," and "attention from leaders."

Recognition goes a long way in making employees feel noticed and valued. And the impact of a pat on the back is multiplied when it's done publicly. Through public commendations, employees not only feel the support and respect of their manager, but the entire organization as well (including top-level executives). Creating a framework for "social recognition" will encourage a culture of appreciation throughout your firm.

Nick Stein is the Director of Content and Media at [Rvople](#), a cloud based social performance management platform that helps Facebook, Spotify, LivingSocial, and other innovative companies recognize great work, run fast, efficient feedback loops, and coach employees to achieve their goals.





Entertainment Human Resources Network

Thank you Karen L. Gabler for your valuable article on the recent Brinker Case decision. Karen's tireless efforts have greatly contributed to this newsletter's success.

EHRN would like to thank first time contributor Paul Falcone for his outstanding article on effective counteroffers. We hope to get many more submissions from Paul.

Al Adamsen has contributed another fantastic article, this time on employability vs. career paths. Thank you Al for your second submission.

First time contributor Glenn J. Dickinson has provided an outstanding article on the legal guidelines for telephone/e-mail during employment separations.

Drew Kugler has provided another superlative piece on overcoming a culture of fear. Thank you again Drew.

Thank you first time contributor Jesse Saivar for your informative submission on SOPA and anti-piracy laws.

We are thrilled to have as first time Rypple contributor Nick Stein's article on employee engagement. Thank you Nick.

EHRN is very pleased to have a submission from Sarah Taylor on the important and topical subject of managing stress in the workplace.

Thanks to the EHRN members whose efforts keep this newsletter moving forward.