

Solutions For a New Economy

Today is the New Economy. Those waiting for the economy to return to pre-2006 levels will be waiting for quite some time. The good news however is that the economy has relatively stabilized and some companies are experiencing growth. Outsourcing still remains a golden opportunity to improve one's bottom line. Core Competency Specialization is proving to not only be a wise strategy, but it's positive impact to a company's financial statement is enabling companies to weather the economic storm.

Good to Great Companies

Great companies are supported by professionals that allow the management team to focus on building the business. They don't wait until they have 50 or 250 employees to make the commitment to become great. Employer's Guardian bridges the needs of the good small to medium sized employer so they can become the great company they envision.



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Situational Leadership

What works with one employee doesn't work with the next. Why? Managing employees can be like herding cats at times. Other times, it can be incredibly rewarding. Witnessing an employee implement your advice/instructions to achieve your desired results brings pride to many a manager's heart. Frustration, however, sets in when what you do and say to one employee doesn't work for all. This brings us back to the headaches that comes with "herding cats".

Communication: Seek first to understand. This statement is quite profound. Learning your employee's thinking style and developmental level, then customizing your management style is paramount on the road to success. Management experts Paul Hersey and Ken Blanchard argue that leaders who don't match their style of leadership to the development level of the person or group they're leading, resulting in failure.

The Hersey-Blanchard Situational Leadership Theory was created by Dr Paul Hersey, a professor and author of "The Situational Leader," and Ken Blanchard, author of the best selling "The One-Minute Manager," among others.

The theory states that instead of using just one style, successful leaders should change their leadership styles based on the competency/commitment level of the people they're leading and the details of the task. Using this theory, leaders should be able to place more

or less emphasis on the task, and more or less emphasis on the relationships with the people they're leading, depending on what's needed to get the job done successfully.

The Hersey-Blanchard model maps each leadership style to each development level, as shown below:

Development Level	Most Appropriate Leadership Style
D1: Low Competence, High Commitment	S1: Telling/directing
D2: Some Competence, Low Commitment	S2: Selling/coaching
D3: High Competence, Variable Commitment	S3: Participating/supporting
D4: High Competence, High Commitment	S4: Delegating

Matching the employee's development level to the appropriate leadership style is paramount in a successful employee/employer relationship. For example, just Delegating a task to a D1 employee will not work. A D1 needs to be given precise directions on how to/ what to do. Likewise, telling/directing (also known as 'micro-managing') a D4 (High Competence, High Commitment) will be quite off-putting to this employee, and production will invariably go down.

Understanding the situation is the key to quality leadership. Assessing employee's development level can be a challenge in itself. To learn how, as well as other Management Techniques, give Employer's Guardian a call today.



Law Update

NLRB's new ruling

The National Labor Relations Board (NLRB) recently announced a new rule. Starting November 14, 2011 to January 31, 2012, virtually all private employers —unionized or not — must post "notices informing their employees of their rights as employees" under the National Labor Relations Act (NLRA). A failure to post this notice is itself an unfair labor practice.

The official approved notice is biased in favor of unions and may mislead employees. Under the NLRA, both employers and unions are required to comply with the law. The new poster lists 14 examples of employer unfair labor practices. In addition, the poster gives employees slanted advice that is overbroad and incorrect. Most notably, it states that employees cannot be disciplined for "talking about or soliciting for a union during non-work time." The poster fails to note that certain employees (for example, hospital employees while working in patient care areas) may lawfully be prohibited from union solicitation.

This is a wake-up call to non-unionized employers. The new poster may increase employee interest in unions. It may also lead employees to question workplace rules that conflict with information on the poster. Given the overbroad wording of the notice, healthcare employers will need to be prepared to explain their rules regarding solicitation in the workplace.

Expect more gifts to organized labor from the Obama Administration. The NLRB is fashioning new regulations that will expedite union representation elections and make it harder for employers to contest those elections. And the Department of Labor is proposing new regulations that will require employers to publicly disclose certain fees paid to labor consultants when responding to union organizing campaigns. These rules, taken together, appear designed to placate organized labor, which was disappointed over its inability to pass the controversial "Employee Free Choice Act" in the last Congress.

Employer's Liability Insurance *Will it be there when you need it?*

The willingness of workers to file claims against their employers has dramatically increased in the past few years. The EEOC reports an average 15.9 percent increase in discrimination claims last year. Second, President Obama has promised a significant increase in funding for enforcement agencies (such as the EEOC, DOL, OFCCP, NLRB, OSHA and others) and has appointed many pro-employee leaders as the new heads of those agencies. Third, court decisions and some of the new laws have significantly eased the burdens of proof for employees to establish discrimination. Finally, the recession has led to multitudes of terminations — which are the most risky personnel decision and the most likely to lead to a claim. This combination of legislative, legal and economic factors is creating a "perfect storm" of unprecedented legal risk to employers. Many employers may look to add or increase Employment Practices Liability Insurance ("EPLI") coverage to respond to this elevated risk. There are a wide variety of EPLI coverage terms and components that may provide an employer with a false sense of security.

Many organizations purchase their insurance through an outside insurance broker. Many times the EPLI coverage becomes a rider to the general liability coverage purchased by the company and thus provided by the same insurer. In some cases, little analysis may be given to the nature of the EPLI policy.

- Brokers and others involved in the purchase are not HR profession-

als and may not be as equipped to evaluate the impact of various coverages, exclusions and other terms.

- Brokers and the buyer may focus primarily on cost and deductibles instead of items which may have a more direct impact on your personnel practices.

The key issue is the scope of coverage and exclusions. These differ dramatically between insurance policies. The last thing an employer wishes to discover is that a claim that it thought was covered is not covered. Some coverages and exclusions may be bargained with the insurer. Examples of exclusions include:

- The cost of meeting ADA laws
- Claims arising from the Fair Labor Standards Act
- Claims arising from the National Labor Relations Act
- Claims arising from the WARN Act
- Claims arising from the ERISA
- Claims arising from the COBRA
- Claims involving acts toward non-employees or third parties
- Claims involving intentional actions
- Claims arising from the OSHA
- Claims arising from the, reinstatement orders
- Punitive damage claims
- Claims arising from the downsizing, layoffs, workforce reductions, plant closures, or strikes
- Claims for front pay, fines or penalties
- Claims for negligent hiring, training or supervision

EPLI may be a prudent step to respond to the "perfect storm" of legal risks being faced by today's employers. But EPLI should not be viewed as

the only answer; it is only one of many prevention tools that should be evaluated by HR staff. If EPLI is purchased, then care should be taken to select the proper coverage and appropriate endorsements should be negotiated to ensure that there are no surprises when a claim is filed. Another policy excludes any termination of employment for which the employer has failed to exercise "duty and care." That overly broad imposition potentially allows the insurer to avoid a very large class of cases, since plaintiffs will always allege that the employer did not properly dispatch those duties.

Still another approach is to exclude all claims that were "expected or intended by the level of management responsible for making policy with regard to the 'wrongful act.'" Once again, this exclusion is just narrow enough to exclude an entire category of everyday occurrences—anything from flawed policymaking by supervisors to errors an in-house attorney makes in a developing an employment manual.

With the variety of policies and exclusions, keep in mind that EPLI does not, of course, replace good HR practices that help the organization avoid lawsuits from arising in the first place. For instance, training managers to operate within the law is critical to avoiding a costly lawsuit. Be certain you have implemented smart employment practices such as strong anti-harassment and discrimination policies, a complaint and investigation program, and an employee handbook that contains at-will language and agency control.



Cal/OSHA is placing a new found emphasis on emergency preparedness plans. Failure to have a written, well thought out emergency action plan in place can cost lives, livelihoods, and even without an accident lead employers directly to huge fines from Cal/OSHA. Cal/OSHA issues citations for not having a written plan (Title 8, section 3220).

"In general Cal/OSHA is more concerned with written documents taking more care to ensure that employer plans are completely documented," says employer attorney Fred Walter, adding that in the past the inspector would say your plan is weak, beef it up. "Now they're more likely to say you failed to include items six and nine therefore I'm issuing this citation."

Under the new administration Cal/OSHA is increasing its enforcement efforts against employers. Fines go to the State's general fund.

A record of those cites goes on all employers permanent record, is available to plaintiff's counsel and can be used in cases involving employees as evidence against employers in a 132a proceeding or other legal actions – even those not involving safety and health.

"You can't plan for a crisis when you're having one," Steve Gray, principal of Rockford Gray, a firm that provides executive level consulting on media training and crisis management, tells his clients. A written emergency action plan must be tested, reviewed and updated at least once a year.

Gray says that there is not a crisis without victims. People including regulators take notice if you don't manage the situation and take care of the victims.

"You need to place highest value on human life. You can't just say it, you need to believe it," Gray says. "Your reputation is on the line because you've got victims, and you didn't take care of them."

An emergency action plan has to



have a threat assessment, preparedness experts say. Until it is determined what manmade or natural disasters will affect a business, it will have zero effectiveness. There are specific plans geared for fire, earthquake, chemical spills, and even bomb threats.

Avoid 'template programs,' or an emergency action plan that some other organization uses. It will likely not apply to your emergency situations, experts warn.

"An oil refinery has some of the same, but also a much different set of threats when compared to a local grocery store a mile away," says Jim Wolbrinck, emergency preparedness specialist for the San Jose Water Company. "[B]oth may have to deal with the same earthquake fault, but the oil refinery has a much larger threat from terrorist activities, and the local grocery store is much more likely to have to deal with an armed robbery."

The same can be said for a large agricultural operation that lies on a fault, but is more likely to face heat illness injuries and fatalities. Part of an emergency action requires specific procedures notifying first responders, especially in remote areas.

"It's not like you can just pull it up on the GPS locator. You've got to work with landmarks and cross roads," says Amy Wolff, executive director of Agsafe. "It's about training your employees, here's how we're going to handle this, showing them maps..." she says, adding that with every shift someone is the designated contact for first responders.

Different Industries, Different Crises-- Different Plans

Assess potentially hazardous situations and take steps to mitigate the

risk. If a company stores chemicals in a building on the premises, keep an inventory of the chemicals and where they're located, says John Gargiulo, senior loss prevention specialist with CSAC-Excess Insurance Authority.

He adds that in earthquake prone areas make sure high shelves are secure and take note of what's on those shelves. If there are gas lines inside the building have a procedure for getting the gas turned off.

Employers need to think a process through. For example, once employees are evacuated where do they go? What about contractors? Are they on board with your EAP or are they following a different plan?

"Is the supervisor going to take roll? Do you know where that is? Just getting people to evacuate [is a challenge]...Can I go to my locker, can I get my purse, can I get my lunch? No, get out," he says.

In Agriculture when directions like 'Go three miles past the big rock on the left and then turn right down the dirt road' are the best address. In those situations sending people out to help guide in responders is a likely part of the required plan.

As a company grows, procedures and technology need to be updated. "You can have a good plan in place, but if you start setting up satellite offices or have people working in the field...you need to make sure the people there know what to do," Gray says.

Gray tells his clients to provide an escalating set of facts over time to see how employees respond to each situation. When the smoke clears after an emergency, run through the process. What didn't work and what could have gone smoother. (Continued on Page 4)

CAUTION
IF YOU THINK
OSHA IS A
SMALL TOWN
IN WISCONSIN
YOU'RE IN
TROUBLE

EYE ON SAFETY

Cal/OSHA lists the following as the most important employer responsibilities under the 1973 Cal/OSHA Act and Title 8:

- Implement and maintain an Injury and Illness Prevention Program* and update it periodically
- Inspect the workplace to identify and correct unsafe and hazardous conditions
- Make sure employees have and use safe tools and equipment and properly maintain them
- Provide signs to warn employees of potential hazards
- Establish or update safe operating procedures and communicate them to employees
- Provide medical examinations and training when required
- Report any serious injury or illness, or death to Cal/OSHA
- Keep records of work-related injuries and illnesses
- Post the Cal/OSHA poster informing employees of their rights and responsibilities
- Provide employees access to the Log and Summary of Occupational Injuries and Illnesses
- Provide access to employee medical records and exposure records to employees
- During an inspection, provide Cal/OSHA enforcement personnel with names of employee representatives
- Do not discriminate against employees who exercise their rights under the California OSH Act
- Post Cal/OSHA citations at or near the work area involved
- Correct cited violations.

Emergency Preparedness

Continued from Page 3

"It is essential to interview witnesses, secure the scene, document the scene and protect evidence," Gray says. "Those investigations should be [used] for assessments and follow up with best practices." What's the toughest aspect of emergency management response? Communication, Wollbrinck says.

"I've never been involve in an exercise or event where the participants say, 'All aspect of communication worked great!' It is just the opposite. The breakdown, lack of, or limited communication is always one of the top items in the After Action Report," Wollbrinck says. "[L]ook at your common forms of communication and develop a plan for how

you will continue to communicate should they go down."

Wollbrinck says his company has multiple forms including land lines, cell phones and internet phones. It also has its own private radio network, and it's just started working with a group that's developing an "alternate internet," if the internet goes down. "All forms must be used in day to day operations, or practiced with on a regular basis," he says.

A Webinar in Emergency preparedness is being offered by Cal-OSHA Reporter.



INSURANCE ALERT

Nov. 4, 2011

Insurance Commissioner Jones approved a 38% average increase to base rates for Worker's Compensation insurance. 38% is a significant increase and will cause may employers pain in the coming years.

Know that there are ways to contain Worker's Compensation increases via pay practices, safety programs, and other elements. At Employer's Guardian, we're here to Minimize your Risks, Maximize employee Performance, and increase your profitability.



Professional Experience

With over 90 years of combined experience, Employer's Guardian provides an unparalleled level of expertise in Human Resources, Risk Management, Payroll Processing, and Management counseling.

Employer's Business Review

IT STARTS WITH...

...an Employer Business Review. This stand-alone report is designed to check a company's standing on Labor Laws and OSHA compliance. Unfortunately, our litigious society targets 'cracks in the armor' and this can cause significant headaches for employers. The Review defines those 'cracks', and therefore a knowledgeable road map can be developed, keeping employees/attorneys from exploiting the 1500+ laws employers have to abide by. Many of our clients use this "3rd Party Review" as a way to check their standing on employment law. Don't let another day go by wondering if your company is in compliance. Call Employer's Guardian today.

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Maximize
Employee Performance
Minimize HR & OSHA Risks

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