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Employee Relations Time for Total Compensation Statements

The rule of thumb is that benefits typically account for another 40% of a company's total payroll budget. As year-end approaches, it's time for you to consider providing employees with their total compensation statements early in the coming new year. Perhaps you do this annually, in which case "keep it up." If you haven't been, then it's time you begin to do so.

Total compensation statements show employees their wages plus both theirs and the employer's contributions to the full list of benefits your organization offers. It paints a much broader picture than just wages and helps employees to see the full cost the organization bears to provide them and their families with benefits such as health insurance. Especially during down economies, like the one we are currently in when employers may be unable to offer salary increases, it's increasingly important to show your workforce that you are still incurring overall increases in overall payroll (for example, to meet rising health insurance costs).

To the extent possible, each employee should receive a personalized total compensation statement to maximize impact. Include both mandatory and voluntary benefits, including both the employee's as well as employer's contributions.

Here's a list of items you might include, depending upon those your organization offers:

- Wages
- Health insurance coverage
- Dental insurance coverage
- Vision insurance coverage
- Life insurance coverage
- Short-/long-term disability
- Workers compensation contributions
- Retirement plan contributions
- Profit sharing

- Bonus/incentives
- Social Security tax
- Unemployment tax
- Paid time off (vacation, sick, holiday, personal leave)
- On-site fitness center or subsidized fitness club memberships
- On-site child care
- Employee assistance program
- Tuition reimbursement
- Company-sponsored medical exams or testing
- Company-paid flu shots
- Child-care, elder-care, and other referral services

Include a summary at the end of the statement showing the total estimated annual cost of compensation and benefits and the dollar amounts and percentages of the total provided by both the employee and the employer;

and encourage that the employee share the statement with appropriate family members. You may consider mailing these statements to the employee's home to help ensure that the significant other has a greater chance of seeing it.

You may have the internal ability to make these statements available real-time online if you have a sophisticated HRIS. If you need help, chances are your benefits provider(s) and/or broker(s) may have services available to help make the preparation of these statements relatively simple and painless.

Added benefits of providing these statements include: showing employees (and their families) how you are helping them to accumulate total, long-term wealth; and employee retention when they can 'see' the total value of their wages, benefits, incentives, and perquisites.



Training & Development

Measuring Your Training Efforts

When budgets are tight and every dollar of expense is being closely scrutinized, the first department to feel the pinch is often HR/Training. Training is a cost center, does not produce direct revenue, and is often seen as a “nice to have” rather than a necessity.

Part of the perception that training is not really a necessity may be a result of a failure to effectively manage and evaluate training programs. Training for training's own sake may well be a luxury; but training that results in increased productivity, increased sales, reduced costs, or more effective use of personnel makes a positive contribution to the bottom line of the income statement.

Measuring “Reaction”

Measuring the results of your training efforts does not have to be complicated or difficult. The simplest type of evaluation is known as “Reaction” and is generally a brief questionnaire that participants complete at the end of the class. Such questions as, “How would you rate this program?”, “Will you be able to use this material on your job?”, and “Was the instructor knowledgeable?” are typical. While this type of measurement does give an indication of whether or not the trainees enjoyed the class, and can enhance their motivation to learn, it gives no clue as to whether the people will actually change their behavior as a result of the training.

Measuring “Learning”

The next level of measurement is “Learning.” This type of measurement assesses the knowledge gained by the participants in the class. Knowledge is typically measured with paper and pencil, in-class assignments, or online tests. Knowledge can also be measured with performance tests, in which trainees must demonstrate their ability to perform the task.

Measuring Behavioral Change

The next highest level of training evaluation is “Behavioral Change.” Probably the most effective way to measure behavioral change is to use a pre-test/post-test method. For example, if a company

plans to train managers on how to give feedback on performance to employees, it would be appropriate to first measure the current level of employee satisfaction with their managers' feedback. This could be done with a simple survey. Following the training, that same survey could be used to measure the managers' improved performance in giving feedback. The knowledge that the company intends to measure their performance as feedback givers and will hold them accountable for improvement is a powerful tool in motivating the managers to use what they learned in the training class.

Measuring “Results”

At the highest level of training evaluation is “Results.” Although few companies take their training evaluation to this level, it is the most effective means of determining whether or not the training was worth the investment. Measuring results can be simple or complex, and should be tailored to the needs of the business.

For example, if a group of 4 salespeople attend a conference to improve their selling and closing skills, and if the cost for the conference was \$1000 per person, the company investment is \$4000. If those salespeople increase their sales volume by \$50,000 each over the next year, the company will have an additional \$200,000 in sales volume. Assuming a 40% profit margin, the company will have a 20-to-1 return on its training investment. ($\$200,000 \times 40\% = \$80,000$); $\$80,000/\$4,000 = 20$. Looking at it another way, the company will have improved its profit by \$76,000. ($\$80,000$ in increased profit less the \$4000 training class)

A similar measurement can be used for “soft skills” training. Suppose a company has had

an average of 2 EEO claims every year at a cost of \$50,000 (costs include investigation time, preparation of position statements, mediation costs, loss of productivity and other costs). The company invests \$5000 to train their managers and supervisors in Employment Law. In the year following the training, there is only one minor EEO claim which is settled in mediation for \$500. The company has a 9.9-to-1 return on its training investment. ($\$50,000 - \$500 = \$49,500$); $\$49,500/\$5,000 = 9.9$. The company has reduced its expenses by \$44,500. ($\$50,000$ in costs less the \$5000 for training)

In all cases, evaluation measures must be tied to the learning objectives that were set up in the Needs Analysis phase of the training. For example, if a training objective was for participants to be able to distinguish between situations that are or are not sexual harassment, then it would be appropriate to administer a written or online test, or have participants give examples of both types of situations in class. If the training objective was for participants to reduce turnover costs by using more effective interviewing, then a comparison of turnover numbers before and after the classes would be an effective way to measure training's results.

Companies have many demands on their budgets. In recessionary times, items that are “costs” are most in danger of elimination. But before categorizing training as an unnecessary expense, look first to what training can do for the company in terms of generating revenue, reducing costs, or improving service—and hold it accountable to do so.

Recruitment & Retention

U.S. DOL Offers Free Employer's Guide to Good Practices in Testing & Assessment

The United States Department of Labor offers a free publication titled “Testing and Assessment: An Employer's Guide to Good Practices.” It consists of 9 chapters plus 2 appendices—one with sources of additional information on personnel assessment and the other with a glossary of assessment terms.

Information in the publication includes explanation of employment laws and regulations and implications for assessment; quality of tests (reliability and validity); assessment tools; selecting and administering tests; using, scoring, and interpreting assessments; issues and concerns; and a review of principles of assessment.

This is a comprehensive and useful guide to understanding assessments.

You can get your copy at:

<http://www.dol.gov/compliance/topics/hiring-testing.htm>

Scroll down to “Compliance Assistance Materials” and click on the title of the publication provided above for your full PDF copy.



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PERFORMANCE MANAGEMENT

Who Owns Performance Management?

Ultimately, it is the immediate manager or supervisor who owns performance management. One may argue that it's HR (who is responsible for ensuring that an effective process exists) or the CEO (who should certainly be involved and articulate the importance of a sound, consistent, and ongoing process). However, all roads lead to the manager. Both executive management and HR are jointly responsible for ensuring that managers and supervisors have regular training in how to conduct and document effective performance reviews.

Why do managers own performance management? Managers should be held accountable by executive management for timely, balanced, and meaningful reviews of their direct reports for two major reasons: 1) to properly 'manage' performance and maximize productivity; and 2) to avoid potential legal issues.

Performance must be managed, just like any other function within an organization, in order to maximize productivity, quality, or service. Just as we 'manage' a budget and don't simply expect it to be where we want by the end of each quarter or each fiscal year, we should manage performance to ensure it's on track. Performance management is always important but particularly so during tough economic times, such as now, when companies really need to focus on getting the critical things done that help achieve organizational priorities.

Performance management must be managed to avoid legal issues. Wrongful termination cases can be extremely expensive...both in dollars and time spent. One expert estimates the average cost of a wrongful termination lawsuit at \$1.8 million. Performance reviews often contradict or fail to support a termination, disciplinary, or promotion/demotion action taken by employer.

Managers often have a tendency to rate all direct reports about the same. This, too, creates problems when high performers or low performers aren't provided appropriate feedback consistent with their results. Many companies are holding "calibration sessions" in which managers are brought together and, with the help of an appropriate facilitator, agree on similar standards for assessing employees' performance. The manager's leader and an HR representative often review the assessments, prior to delivery to the employees, looking for lack of or weak documentation and overall consistency throughout the business unit or organization. This can be especially important when a manager rates someone either very low or very high. In the case of poor performance, an individual should clearly be provided action items or steps toward improvement. High ratings should require explanation as well to make clear the reason(s) for the positive rating. It also provides the employee with a clear understanding of what he or she did that was right or good so that the behavior is acknowledged and hopefully repeated.

When managers don't document or insufficiently document performance issues and then run to HR wanting to terminate someone because they can't take it any longer, it is HR's job to advise them to go back to the drawing board

and build their case properly. Rushing through the process just to get rid of someone who was allowed to under-perform for too long is unfair to the employee. Part of a manager's responsibility—and something for which they should be held personally accountable—is to build talent within their respective team or department. This includes identifying areas for development and providing the tools or resources that help the individual improve performance. That is not to say that HR can't help, but it's the manager's responsibility to recognize the need and ask for any assistance.

I've made the comment in this column in a previous issue that I am of the opinion that managers who are not responsible about completing meaningful and timely performance reviews for their direct reports should not receive theirs and should even have their salary increases held back. It happens to be all too common that "accountability for performance appraisals is not sufficiently reflected in managers' performance ratings or merit/pay bonus," according to Heather J. Broadwater, an attorney with Venable LLP in Washington, D.C. Tom McMullen, U.S. rewards practice leader for the Hay Group in New York, said to "go a step further [from simply holding managers accountable for group results] and hold...managers accountable for building the human capabilities of their organization."*

*Adapted from several SHRM articles: "Why Managers Should Own Performance Appraisals," by Pamela Babcock, November 2008; "Performance Management Goes Beyond the Annual Form," by Rebecca R. Hastings, July 2008; "Stop Whining, Be Accountable," by Nancy Davis, June 2008; and "Calibrating Consistency," by Joanne Sammer, January 2008.

Performance management must be managed to avoid legal issues. Wrongful termination cases can be extremely expensive...both in dollars and time spent.



LEGAL COMPLIANCE

Legal Implications of "Joint Employment"

Many companies rely on temporary help agencies to help them fill seasonal, peak, or ongoing employment needs. While there are many advantages with this arrangement, there are also many potential danger areas for the unwary employer.

When employers hire employees through a temporary help agency, those individuals become the "employees" of both the company ("client") and the agency. While each entity has its own specific obligations to the employees, both are liable under the concept of "Joint Employment" for violations of EEO law.

Temporary agencies may recruit, interview, help with resumes, screen, drug test, and / or skills test employment candidates for an employer. Persons who are deemed qualified are then dispatched (assigned) to the client employer. The agency is responsible for payroll, payroll taxes, I-9 verification, personnel files, and other administrative tasks associated with employment. The client employer trains, assigns duties, evaluates performance, and may terminate the workers' employment if it is not satisfactory.

Temporary employees must be counted as "employees" by the client employer for purposes of legal compliance with ADA, FMLA, OSHA, and FLSA.

In 1997, the EEOC issued an enforcement guidance titled "Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms" ("Contingent Workers Guidance") that dealt generally with the liability of staffing firms and their clients for violations of federal employment discrimination laws.

The Americans with Disabilities Act (ADA) specifically states that both the agency and user-employer are required to reasonably accommodate a worker with a disability.

Job standards that staffing firms and their clients use that exclude an individual with a disability from employment have to be job-related and consistent with business necessity.

If the qualification standard is not job-related and consistent with business necessity, the staffing firm is liable for violating the ADA if it is applying either its own standard or its client's standard. The client is liable if it requested the staffing firm to use the standard or if it used the standard directly.

A staffing firm also may be liable if it knows or has reason to know that a client is using a discriminatory qualification standard and

fails to take corrective action within its control. The same is true of a client that knows or has reason to know that a staffing firm is using a discriminatory qualification standard.

If the qualification standard is job related and consistent with business necessity, the staffing firm and/or the client must consider whether there is a reasonable accommodation that will enable a staffing firm worker with a disability to meet the standard.

Contingent (temporary) workers may be covered under the Family and Medical Leave Act (FMLA) if they are employed for at least 12 months and if they worked more than 1,250 hours in the previous 12-month period. This is the same basis for qualification as any other employee. The 12 months do not need to be consecutive, nor does the employment have to be with a single client.

FMLA specifically applies to temporary or leased employees, stating that joint employment will typically exist in those relationships. Employees in joint employment relationships must be counted by both entities for purposes of coverage under the FMLA. Generally, however, temporary agencies will be regarded as the primary employers and are responsible for notifying the employee, providing leave, maintaining health benefits during leave, and restoring employment following the leave. The client employer will be the secondary employer and is responsible for accepting the employee back to work from leave. The returning employee must be accepted in place of any replacement employee the agency may have provided, if the client continues to utilize an employee from the agency, and the agency chooses to place the employee with the client.

Clients are also responsible for compliance with the prohibited acts provisions with respect to their temporary employees, whether or not the company is covered by FMLA. The prohibited acts include interfering with an employee's attempt to exercise rights under the FMLA, or discharging or discriminating against an employee for opposing a practice which is unlawful under FMLA.

The Occupational Safety and Health Act (OSHA) requires all employers to maintain a safe workplace, free from known hazards. Employers are obligated to inform all employees and contingent workers of any hazards in the workplace. Client employers are responsible for daily supervision and are required to keep a record of accidents for all workers in their workplace, including any temporary workers. Recordable accidents and illnesses affecting temporary workers are recorded on the client employer's OSHA logs, not the agency's.

The Fair Labor Standards Act (FLSA) governs wage and hour issues in the workplace. FLSA defines employee as "any person acting in the interests of an employer in relation to an employee." While the agency is usually held responsible for wage and hour issues, the FLSA imposes joint obligations if the employee works for two employers in one week. Thus, both the agency and the client employer can be held responsible for wage and hour issues, such as the payment of overtime and the correct classification of employees.



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