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Margaret Rowe, IPMA-SCP
Human Resources Director

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Human Resource Professional
Nicole D. Carr, who currently serves as director of human resources at the California Department of Social Services, leads off this issue of HR News by making the convincing case that “Training Is the Critical Link in a Successful Performance Management Program.” She also offers readers a helpful table that moves from an observable instance of poor employee behavior to that behavior’s underlying causes to solutions proven to mitigate that motivation.

None of this month’s contributing authors would disagree with Carr main point. Stefano Bellasio, who founded and leads a cloud computing training company, states that organizations in all sectors must develop distributed computing talent from within their own ranks if they want to survive and thrive. The managing partners for Analytics Launchpad, Nick Pan and Hasanath Mohammed, offer the same urgent advice for ensuring the capacity to collect, organize, analyze and act on quality data.

Training must be tied to staff development, of course, and advice on how to cement the link can be found in “5 Steps to Be a Great Manager,” which are presented by Sage Communications Vice President of Public Relations and Employee Engagement Brian Kelley. The pressing issue of “training for what” also takes focus in my own contribution, “Tackling the Law Enforcement Personnel Shortage Takes More Than Money.”

In the final feature article, Rachel Shaw, author of The Disabled Workforce: What the ADA Never Anticipated, delves into the difficulties human resources managers and entire organizations face when employees suffer from unmanageable stress, depression, and other mental health problems that may or may not qualify them for accommodations under the Americans with Disabilities Act.

Read through the whole magazine to learn about important federal court decisions in employment cases, how to prepare for certification and your candidates for 2019 IPMA-HR president. And don’t forget to share your own ideas for articles, columns and Association news by sending an email to publications@ipma-hr.org. —N

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IN TOUCH WITH IPMA-HR

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Coming up in the August issue of HRNEWS

HR Analytics
Training Is the Critical Link in a Successful Performance Management Program

By Nicole D. Carr

One my favorite things to do as a human resources director is help employees succeed at their jobs. Because of this, I appreciate having had opportunities to assist managers with restructuring their organizations, building high-performing teams and training staff members to perfect their analytical skills and expand their abilities to enhance productivity. I have also had occasion to manage poor-performing staff whose behavior improved after they received training, progressive discipline and, following improvement, recognition.

In this article, I offer managers four effective performance management program (PMP) tools I developed over my own career:

- A work behavior indicator and solutions matrix that points to methods for correcting the behavior of poor-performing staff,
- Steps to take to develop and implement a performance management program,
- An employee evaluation process that encourages engagement and
- Finding multiple training resources.

Defining What a Performance Management Program Can Achieve

Too often, PMPs are viewed strictly as forms of discipline for employees after other methods of correcting behavior fail to produce positive changes. It can help an employee and the organization much more to treat PMPs as training and development opportunities.

Indeed, successful PMPs should be fluid and agile, allowing managers to collaborate with the employee to strengthen weaknesses and build on existing strengths. Goals, rewards and escalating discipline for failing to make progress should be woven into each PMP to maximize the potentials for correcting poor work behavior and developing new skills.

Results from a study reported in the December 2015 *Journal of Economics, Finance and Administrative Science* show that performance improved when organizations increased employee training and development activities. Further, the study revealed that organizations that provided incentives did a better job of motivating employees to be more engaged in their work and to accept increased levels of responsibility within the organization. The take-home lesson is that when organizations invest in their employees, employees reciprocate by producing good work products and demonstrating high-performance habits.

Identifying Ways to Correct the Cause of Poor Performance

It is difficult to develop an effective PMP without first understanding the causes of poor performance. Managers may not specifically recognize the behavior contributing to poor performance even as they plainly see the undesirable outcomes like low productivity or poor service delivery.

There is a growing presumption that poor performance is a clear manifestation of incompetency or an employee’s lack of workplace tools necessary to complete work assignments. Neither may be an underlying cause of poor performance. The key to addressing poor performance is determining the root cause of performance deficiencies and, then, identifying an appropriate solution. Table 1 offers a starting point for doing this.
Developing a Performance Management Program

Every employer wants it employees to succeed. To achieve this vision, employers must communicate openly, provide honest feedback on performance and deliver sufficient training. In line with this, the development of a PMP should begin with a review of how an employee’s manager interacts with his or her direct reports. A PMP must also establish improvement milestones based on data collected from staff assignments and from evaluations of similar PMPs.

Evaluating an Employee’s Progress While Under a PMP

Taking the approach outlined in Table 2 to implementing and evaluating a PMP enables a manager to adjust training elements and encourages interactions with the employee that are aimed at communicating objectives.

Table 1. Poor Work Behavior Indicators and Solutions

<table>
<thead>
<tr>
<th>Observable Poor Work Behavior</th>
<th>Underlying Cause of Poor Behavior</th>
<th>Performance Management Program Solutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insubordination, hostility, poor attitude</td>
<td>Poor attitude</td>
<td>Issue expectation memos and provide formal subject matter training and/or peer-to-peer training.</td>
</tr>
<tr>
<td>Unwillingness, refusal or inability to update skills; resistance to changes in policies, procedures or work methods</td>
<td>Resistance to change</td>
<td>Launch a broad communications plan to explain changes and seek feedback from affected staff to gain support for the changes.</td>
</tr>
<tr>
<td>Impatient, inconsiderate, argumentative, inappropriate communication style</td>
<td>Inappropriate interpersonal relations</td>
<td>Use periodic performance reviews to discuss why the behavior is wrong and cannot continue and to provide interpersonal skill training.</td>
</tr>
<tr>
<td>Smoking in no-smoking areas, alcohol or drug use at work, hostile or intimidating behaviors</td>
<td>Inappropriate physical behavior</td>
<td>Ensure all staff are aware of organizational expectations by providing mandated training and enforcing no tolerance policies without favoritism.</td>
</tr>
</tbody>
</table>

Locating Training Resources

Training drives the entire performance management process. One of the first places I turn to for training resources is IPMA-HR, which offers a number of courses for mid- and senior-level HR professionals online at https://www.ipma-hr.org/advance-your-career/courses. Similar online resources exist and can be found by searching for “human resources academy.” Be sure to do due diligence before encouraging employees to register for any training.

Last, each organization must create internal training programs that feature peer-to-peer learning and emphasize knowledge transfer. All forms of training must meet staffing needs for organizational and workforce succession plans.

A Final Note

The single most important thing managers do is hire talent. Adequate performance management requires engaging in high-quality recruitment and retaining great employees. Managers must, therefore, develop comprehensive talent search strategies, carefully craft job descriptions and advertise vacancies across a range of channels in order to attract diverse and qualified candidates. Hiring well reduces the time, effort and additional costs of retraining and imposing progressive discipline.

Which is not to say that great hires need no training and development. Rather, offering professional growth opportunities to employees fosters their success and protects the health of the organization. Further, providing quality employee training and development increases already high performance and improves retention.

Nicole D. Carr is the director of human resources at the California Department of Social Services, and she has served as an executive in several California state agencies. Carr’s Aging Done Smart was published in 2018. You can reach her at nicole.carr@dss.ca.gov. —Nicole D. Carr
It is no secret that the market for technology talent is competitive. Compounding the challenge presented by the limited pool of qualified candidates, the IT industry is experiencing an ever-growing skills gap. Hardware and applications evolve so rapidly that degrees and even job experience become outdated quickly. This IT skills gap is so prominent, that more than 75 percent of organizations believe employees' insufficient digital skills prevent them from fully realizing the potential of digitizing and automating processes.

Here are three things that organizations who succeed in hiring and retaining tech talent do.

**Develop Needed Skills Instead of Just Recruiting**

Hiring experienced candidates is the default approach for many of us, and this is where we run into our first obstacles. Hiring and onboarding a new employee can cost an organization up to $240,000. To conservatively calculate how much it costs your organization to hire talent, use this equation:

\[
\text{total internal recruiting costs + external recruiting costs} \div \text{total number of hires in a given time frame}
\]

Beyond that, the pool of candidates with, say, cloud computing skills and experience is small and everyone is recruiting them. LinkedIn reports that “cloud and distributed computing” will be the single most in-demand hard skill throughout 2018.

This means that most candidates for the IT position that most organization most want to fill with new hires are the most in-demand and expensive people to hire, which is a recipe for retention challenges. While hiring recent college graduates may be a good medium-term strategy for your organization, it is definitely not the best future-focused option. Before you start your search for the unicorn who has the required skills, is easily recruited and highly loyal, consider building your IT team from within.

**Make Developing Technical Skills a Goal for Most Employees**

Since recruiting will not solve your tech talent shortage all by itself, it is crucial for organizations to invest the time and resources required to train employees in order to correctly and effectively design safe, secure, auditable and traceable cloud solutions that meet the demands of the organization. And training for the cloud means more than ticking a few checkboxes. Merely making training available to staff and taking a traditional approach to development will not suffice. Treat IT skills development as you would any critical business challenge by subjecting it to assessment, management and measurement.

Investing in the right type of continued education is a powerful way for organizations to attract new talent, especially when more than half of qualified candidates gravitate to organizations that offer opportunities to improve their ability to contribute. Consider the following actions when building out your cloud training program:
Build training goals into everyone’s quarterly or yearly objectives.

Assign training plans that align with targeted skill sets that evolve rapidly.

Encourage a culture of continuous improvement and take a data-driven approach to digital transformation through transparent metrics around effort (i.e., resource investment) and end results (i.e., skill acquisition).

Do not rely solely on vendor certifications. Establish custom certification programs and offer ongoing preparation courses that align with specific intricacies of your technology stack and your internal policies and processes.

Invest in Diversity and Nontraditional Talent Resourcing

As workloads in all fields shift to the public cloud, distributed computing has become a core competency for many people who never explicitly studied computer science. This means individuals in the hard sciences, engineering, medicine, biology, applied mathematics and other disciplines make possible recruits for an organization’s IT team.

Organization, again, should look within to find undervalued talents in their departments. The chances for finding a diamond in the rough where you never expected increase when you invest in business-forward, data-driven methods to expand the potential talent pool.

There will always be new technologies that increase efficiency, reduce costs, ensure added security and deliver faster results. Instead of investing in trying to hire future tech staff, organizations must follow a strategy that prioritizes in-house talent development. When cloud skills are treated as the critical business asset that they should be, you are signaling that being disrupted is not an acceptable outcome.

Stefano Bellasio is the founder and CEO of Cloud Academy. You can connect with him via Twitter @stefanobellasio.

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When Gartner surveyed more than 3,000 chief information officers, the firm found that CIOs’ top spending priority was not cloud services, security or even data protection. It was analytics. CIOs want, and need, insights that will help them gain advantages such as better business intelligence and enhanced data storage performance at lower costs.

Analytics is becoming an essential part of the organization instead of an auxiliary. As noted as early as 2014 in a Harvard Business Review webinar titled Embedding Analytics for Growth, “More and more organizations are investing resources to ramp up their efforts to use big data and analytics to drive growth. Yet many feel they have not realized the full potential of their analytics capabilities and feel frustrated that they aren’t doing more, faster.” MIT’s Michael Schrage noted that a reason for this may be a “failure to change the organizational culture.”

The introduction to the webinar further explains that “using big data and analytics to solve problems and make better decisions requires new behaviors across all the business functions in an organization.” What compounds this problem is the scarcity of analytics talent. The demand for data skills has grown sky high.

For two straight years, LinkedIn has listed business intelligence as one of the skills employers seek the most. A quick search of Indeed.com returns more than 84,000 postings for data analytics jobs. And back in 2011, McKinsey predicted a shortage by 2018 of as many as 1.5 million managers and analysts with analytics skills.

Adding to the scarcity, identifying and validating analytics talent is complicated by the emerging nature of the discipline. “Unlike other professions,” Mark Jacobsohn of Booze Allen Hamilton told CIO in November 2017, “we have not seen a single widely recognized certification for data science. There is disagreement on what the term means. That makes recruiting and training more challenging.”

Because of these issues, many organizations are establishing data science training programs for existing employees. At Booz Allen Hamilton, Jacobsohn explained, the need for security clearances for individuals who work with government data did much to drive the decision to train hundreds of current staff members in data science.

Jordan Morrow, the data literacy program manager for data analytics platform maker Qlik, focuses on “developing a culture of data literacy at the beginner, intermediate and advanced level. Morrow told CIO that “in our training, the critical turning point is changing the perspective on data. Many people view data as reporting or simple summary statistics. We want to equip our staff to ask deeper questions with data.”

The spread of AI gives more people the ability to ask data-related questions, which increases the demand for data literacy. For a good analogy, think about whether anyone imagined nonaccountants would use computer spreadsheet software.

Just as nearly every office worker now needs spreadsheeting skills, soon everyone will need some familiarity with data science tools. This means that every organization needs to develop an effective analytics training program. Such a program must be aligned with the overall human resources strategy, which covers the entire employment lifecycle from new hire orientation and workforce enhancement to internal transfer and promotion. Moreover, HR managers will want to make sure that the right people with the right skills are working on the right projects at the right time by identifying the key data analytics skills needed by a certain employee at a certain time for a certain role.

Not surprisingly, a standardized skills assessment is usually the best way to reach a better understanding of the match between the skills employees currently possess and what their roles require.
When it comes to data analytics, skills can generally be divided into the three categories of

- **Exploratory**
- **Predictive**
- **Prescriptive**.

Exploratory skills cover a basic understanding of tabulating data for the purposes of creating a spreadsheet in Excel. It also covers knowing how to assess the quality of data and how to create simple visuals to reveal valuable insights. Such exploratory skills should be possessed by each corporate employee.

Predictive skills include looking for patterns in historical data and predicting future outcomes. These skills have been proven to be critical for every department involved in operations, finances or sales. Leaders of these departments are eager to take advantage of data for forecasting. It is important, therefore, that these departments have someone with predictive skills who can own the analytics process and perform analytics tasks.

Last, prescriptive skills are the most advanced and usually require an in-depth understanding of sophisticated modeling techniques for uncovering ultimate data points and correlations. Employing individuals who possess these highest-level skills is critical for any company that intends to rely on data to inform decisions about the future.

After defining the needs of each department and inventorying the analytics skills already available among staff, an organization should implement a properly designed training program to fill in the gaps. Exploratory skills have become mainstream, and almost everyone should learn them. The most efficient and economical way of conducting such training is via online tutorials. Fortune 100 companies generally have the funding to shoot in-house training videos, while smaller firms tend to take advantage of existing resources such as MOOCs, or massive open online courses.

Developing predictive skills, on the other hand, appears to require in-person training. Such training should be tailored to actual corporate needs, but external trainers can be contracted to deliver the courses. Hiring for prescriptive skills does make sense, but such hiring must be done in concert with an organizational vision and followed up with the provision of ongoing training and development for continuously honing data analytics skills. In each scenario it is critical for HR and employees’ supervisors to work together to set specific training goals that align with the organization’s vision and goals.

Each organization should be conscious of where it is headed and how data analytics can help it get there. To make sure data analytics skills never become a bottleneck to achieving objectives, talent acquisition and development programs should include analytics training. HR will play key roles in evaluating employees’ data analytics skills and initiating effective training to strengthen and expand those skills.

Nick Pan and Hasanath Mohammed are both managing partners for Analytics Launchpad. They can be reached at info@analyticslaunchpad.com.
Type “challenges hiring police” into a Google search bar, and you receive roughly 26.6 million results. Municipalities all across the United States are in self-reported crises brought on by baby boomer commissioners retiring, Generation X captains and detectives leaving rather than seeking promotions, and fewer millennials entering academies to serve as patrol officers and deputies.

These problems have always existed to some degree. Law enforcement demands a great deal physically, mentally and emotionally from job candidates and incumbents. Still, difficulties with building and maintaining fully staffed and optimally functioning police forces have piled up over the past decade. Budget restrictions, social media-fueled scandals and even the obesity epidemic have reduced the appeal and accessibility of police positions for many Americans. Against these headwinds, best practices for recruiting and retaining law enforcement personnel for the 21st century have emerged.

A Problem too Big to Ignore

Dallas became a flashpoint in the police officer retention crisis during July 2017, when 72 members of the city’s force retired or left for law enforcement jobs in other places. A major issue there, as elsewhere, is uncertainty over whether pension promises can be kept.

Across the country, nearly all police departments and sheriff’s offices lose staff every year simply because retirement typically becomes an option after 20 years of qualified service or at the age of 53, whichever comes first. Medical disability and termination for cause also account for a fifth of annual vacancies. Replacing a retiree can take more than 12 months when recruitment and basic training are factored in. But the experience of a retired law enforcement officer never truly gets replaced.

That reality makes keeping officers and deputies who are nearing or past retirement eligibility on the force essential. But even seeing maximal success from retention efforts leaves police departments and sheriff’s offices with the constant need for new recruits.

Unfortunately, the number of individuals between the ages of 18 and 40 who are both interested in and qualified for police work continues to shrink. Former Belvedere, Calif., police chief Sid Smith listed the following disqualifications for potential police officers and sheriff’s deputies in a 2018 article for The Police Chief:

- A disinclination to “live to work,” as law enforcement requires considerable overtime, regular weekend shifts and a willingness to remain on call at nearly all times;
- Demands for high starting salaries and rapid advancement, with the average starting pay for a beat cop being $44,000/year and promotions based on test performance;
- Relaxed attitudes toward enforcing drug laws combined with personal histories of experimentation with drugs that bar passage of law enforcement background checks; and
- Unrealistic expectations of what police work involves and can accomplish inspired by movies and TV procedurals.

Compounding these challenges, many millennials simply hold low opinions of law enforcement. With Americans born after 1982 making up the most ethnically and racially diverse generation the United States has ever seen, it matters that young people of color and second-generation immigrants place less trust in police and the justice system than whites whose families have been citizens for a century or longer. A significant number of individuals who could develop into great officers and deputies simply never consider joining organizations they do not fully respect.

Will Any Body Do?

Several localities have found the law enforcement workforce crunch so severe that they have lowered hiring standards, showered cash on new hires and their recruiters, and explored outsourcing. Portland, Maine, in early 2018 opened entry-level police positions to noncitizens with permanent resident status and to individuals
who have recently used marijuana. The city is also offering $10,000 signing bonuses to academy graduates and recruitment bounties of $3,000 to existing employees who refer new officers.

Speaking with the Press Herald on March 21, 2018, Police Chief Michael Sauschuck said the old rule of automatically disqualifying recruits who had used marijuana within the past five years cost the city too many candidates. He did add, “I want to look at frequency and recency stuff. If you smoke a joint in a parking lot before you come in to take a test, it’s probably not going to go good.”

Volusia County, Fla., facing a new requirement to place an armed resource officer in every public school in the wake of the Marjorie Stoneman Douglas massacre, is considering filling slots with private security staffers instead of sheriff’s deputies. A state waiver would be needed to meet the unexpected demanded for 45 new people, but local officials said they may have no choice.

Sheriff Mike Chitwood told television station FOX 35, “Even if I wave a magic wand and got $10 million, and said hey we’re going to do this, it would take forever for me to be able to fill these slots with professional certified law enforcement officers.”

Long-Term Solutions Proposed

No simple, universal fixes to the law enforcement personnel crisis exists. Refunding pension plans and finding more money for patrol officer salaries will help. Beyond those matters, which are largely under the control of elected officials and subject to the collective will of taxpayers, significant commitments to changing human resources procedures are needed. Promising ideas for which HR changes to make are being circulated.

Writing for the Police Foundation blog in 2016, University of Central Florida Deputy Police Chief Brett Meade, Ed.D., listed the following as best practices for recruiting, selecting and retaining officers:

- Use social media to portray the department as an employer of choice and a valued public service agency.
- Target diverse individuals for recruitment and promotion to ensure that the law enforcement workforce looks like the community it serves.
- Develop personal and professional relationships with military transition staff at nearby bases.
- Follow up regularly with previous applicants who opted out of the hiring process.
- Shorten and simplify the hiring process without unduly lowering physical, educational and psychological/emotional requirements.
- Emphasize job security and, when possible, health and retirement benefits.

These recommendations closely match the ones made in the International Association of Chiefs of Police’s Best Practices Guide titled Recruitment, Retention, and Turnover of Law Enforcement Personnel. The guide adds this advice for identifying ways to keep senior officers and deputies on the job: “As agencies attempt to identify the reasons for employee attrition, they should also try to determine the reasons why others stay. By surveying and conducting ‘stay’ interviews with high-performing veteran employees, the agency can likely determine factors that influence their decisions to remain in the agency.”

Applying the lessons learned from stay interviews will strengthen career development, recognition and support programs while also making a department or office a better place to work.
5 Steps to Be a Great Manager

By Brian Kelley

Good managers are not born. While some people are more socially inclined, many managers who do not inherently have strong interpersonal skills still lead their teams to success while minimizing turnover. Anyone can learn how to manage and inspire others, but it takes practice and a willingness to lead with empathy, compassion and humility.

For organizational leaders, success—defined as consistently producing top-notch, award-winning results—comes from managing tight-knit teams whose members range from boisterous extroverts to shy bookworms but functions efficiently and effectively. While one might expect differences among team members to spark clashes, well-led teams work together seamlessly.

No team starts functioning optimally. Wrangling disparate personalities takes time and effort. I work consistently with each team member to ensure team goals and objectives are met while also maintaining an environment in which individuals feel valued and open, honest communication is rewarded. Five management practices I cultivated over the years while leading high-performing teams can work across a wide variety of industries.

Perform Periodic Self Check-Ins

When you start managing others, it is important not to transfer the bad habits you learned from your previous managers to your interactions with team members. Avoiding this is not easy. It often happens when people feel as if they lack power and subconsciously engage in behaviors displayed by people who once had power over them.

Breaking the cycle of perpetuating poor management requires periodically taking stock of how you were and are currently being managed, as well as how you responded to that treatment. You should also reflect on how you, as a manager, exert your influence on those who work for you.

If you are unhappy with your position or feel as if your supervisor is mistreating you, it is especially important to check in with your-
their day, week or month, to say nothing of how the manager’s response will determine whether and how they bring up problems in the future.

**Engage With Your Employees, Don’t Just Deal With Them**

Managers succeed or fail right along with their teams, so fostering an environment of engagement based on trust is critical. When trust is established, team members feel comfortable providing feedback and having open and thoughtful conversations that produce rewarding and award-winning results. And once an engaged mindset takes hold, the stage for success is set.

**Address Challenges Immediately**

It is much easier to deal with small challenges than major crises. When an issue gets brought to your attention, address it immediately and in the appropriate setting.

It is important to keep engagement top of mind. Break out of “you” language, which can immediately put team members on defense and make having an actual discussion about the issue impossible. Then, lay out a pathway for resolution.

During the discussion of the current challenge, make sure employees know you are all on the same team and assure them that are not being attacked or left alone to fend for themselves. When team members feel supported and trusted, they will be more willing to collaborate and to view a challenge as something that is easy to conquer.

**Check in With Your Employees Often**

Good managers check in with their team members on a regular basis. While doing scheduled check-ins is essential for providing formal feedback, continually doing informal check-ins is, in some ways, even more vital. The frequent low-pressure talks will allow you to stay on top of small issues and ensure that team members stay on track and meets objectives.

Managing is not an innate skill, but there are steps you can take to ensure that members of your team are happy and productive. Above all, remember that the way you engage your team dictates organizational and personal success. Take time to assess your managing techniques and keep in mind that even the most introverted person can be a superstar manager. Just like any other job skill, all it takes is practice.

Brian Kelley is vice president of public relations and employee engagement at Sage Communications and has been recognized as an industry-leading supervisor and account director. You can reach Kelley at briank@aboutsage.com.
The Disability Interactive Process for Stress and Mental Health

By Rachel Shaw

A World Health Organization fact sheet notes that more than 300 million people worldwide suffer from depression and names depression as the leading cause of disability around the globe. In the United States alone, nearly 16 million adults experience a major depressive event each year.

This mental health problem produces serious economic impacts. Employees who suffer from depression miss around 27 days of work per year, and experts put the cumulative economic output loss at $2.5 trillion worldwide, a number higher than cancer or diabetes.

U.S. employers see the effects, as absenteeism and requests for accommodations related to stress and mental health rise. This equates to lost productivity and less innovation as too much leave goes unmanaged, unaddressed and not budgeted for, which costs organizations too much.

Since taking the attitude that improving mental health is not an employer’s job is not working, what can organizations do to reduce the negative impacts of mental health–related disability? The first step involves investing in the whole employee. If you aim to tackle the real killers of productivity, innovation and retention, you must build a workforce that has the ability to successfully deal with personal and professional issues and which believes that you care about their well-being.

Giving employees time off to celebrate happy life events and to address the terrible things that occur goes a long way. But granting leave can create problems. An employee’s absence can make meeting workload demands difficult, especially when one or more employee misuses or abuses the leave policy. The people who report to work and take on extra duties can start to resent absent co-workers, which adds to stress in the organization.

Here are three ways every employer can reduce the negative impact of stress and mental illness in the workplace.

Have Early Conversations

Using leave is often the first sign that an employee is having a depressive episode. Despite this, managers regularly wait too long to have honest conversations with employees when one day off becomes a recurrent or extended absence.

Chose an amount of leave that triggers you to have a face-to-face
conversation with an employee. Pay attention to leave, track it and talk about it early and often. Do not shy away from these difficult conversations even while leave use is occurring.

This is not a disciplinary conversation. This is a caring, but strategic, conversation about how to build a win-win relationship with employees. Ask them how you can help them to be at work more. Brainstorm with employees about reducing unnecessary leave. Let them know you want to support them so they can miss less work.

Use Your EAP

Schizophrenia and bipolar disorder are not the only mental illnesses that merit accommodations. Anxiety and stress impact the workplace to much greater degrees, and each can be triggered by normal life events such as going through a difficult breakup, experiencing issues with a child, caring for an ill or aging family member, or managing financial issues. While personal in nature, each situation affects an employee’s professional life.

Enter the Disability Interactive Process Hallway

If conversations about leave usage and EAP services do not lead to improved attendance or if the organization or employee believes there are medical issues, you will need to start going down the Disability Interactive Process Hallway. Initiating this process is also warranted if you have concerns about misuse of leave or if leave is unreasonable.

The hallway I describe has four doors, or process steps:

1. Medical documentation,
2. Exploration of accommodation ideas,
3. Scheduling and holding a reasonable accommodations meeting, and
4. Closing the process properly.

At each step, you gather the data you need to support sound decision-making and build understanding between the employee, their representative and their manager and supervisor.

Medical documentation can be collected by requesting a second opinion on Family and Medical Leave Act leave, administering a supplemental medical questionnaire or requiring a fitness for duty exam. The aim must be to determine if a disability is impacting the employee and, if so, what functional limitations and work restrictions that disability imposes. Completing this step is especially vital when addressing mental or psychological disabilities, which place unique restrictions on work.

Be aware that the Americans with Disabilities Act does not protect certain psychological disabilities that limit a person’s ability to act lawfully and safely. This list includes kleptomania, pyromania, compulsive gambling, sexually disordered behavior and abuse of controlled substances or use of illegal drugs.

Handling psychological disabilities can seem overwhelming for employers and employees, but when issues are addressed quickly while utilizing a uniform process, organizations can be confident that a sound decision can be made.

An employee assistance program, or EAP, provides emotional support, which can be key to getting an employee back on track at work. While referrals to employee assistance programs (EAP) are known to reduce leave by 54 percent, fewer than 6 percent of employees take advantage of these resources.

When you see the workplace being impacted by personal matters, refer employees to your organization’s EAP. Understand that you can suggest this resource or require attendance if an employee is not showing improvements in attendance and performance or does not seem to be able to manage issues that continue to impact them at work. Realize, too, that due to a variety of reasons—some cultural, some social—employees may not be comfortable accepting help through an EAP. To address this, let employees attend EAP sessions during work hours so their family and friends do not have to know and so childcare or afterwork activities do not create scheduling conflicts.

To tackle the real killers of productivity, innovation and retention, you must build a workforce that has the ability to successfully deal with personal and professional issues.

Rachel Shaw is the author of The Disabled Workforce: What the ADA Never Anticipated and the president of Shaw HR Consulting, Inc., which provides disability compliance consulting, training and program development for organizations in the public and private sectors. She can be reached at rachel@shawhrconsulting.com.
W.D. Pennsylvania Finds Plaintiff’s 15-Year Age Difference With Retained Employee Sufficient to Sustain Prima Facie Age Discrimination Claim

The U.S. District Court for the Western District of Pennsylvania denied an employer’s motion for summary judgment on a former employee’s claims of age discrimination in violation of the Age Discrimination in Employment Act (ADEA) and the Pennsylvania Human Relations Act (English v. Truck Pro, LLC and Heavy Duty Parts, Inc., No. 3:17-cv-4, May 11, 2018).

The plaintiff had worked as an inside salesman for a truck and trailer parts store since 1998. In 2014, the defendant determined that business needs required it to eliminate one of the two inside salesman positions at the plaintiff’s store. The defendant then chose the plaintiff, who was 65 years old at the time, to terminate instead of choosing the other inside salesman, who was 50 years old and hired just two months prior. The decision was nominally based on a 20-point assessment of both salesmen’s job performance conducted by the store manager’s judgment and subject to the regional manager’s final approval. Even though the regional manager slightly increased the plaintiff’s score, that still left the plaintiff with a score lower than that of his 50-year old co-worker.

The plaintiff later filed suit for age discrimination and argued that all evidence pointed to the conclusion that his age was a factor in the decision to terminate him. The plaintiff received positive performance reviews throughout his employment, and the 50-year old salesman was the first inside salesman besides the plaintiff that the defendant ever hired. The plaintiff pointed out that the timing of the hire was strange in that the new salesman was brought on just two months prior to the plaintiff’s termination. The manager also commented that the plaintiff’s retirement would make him eligible for Social Security benefits.

The defendant argued that the plaintiff could not make a prima facie case because he was not replaced by someone significantly younger. The court rejected this argument and pointed out that a 15-year age difference existed between the two salesmen. Further, while the court acknowledged that the manager’s comments regarding retirement benefits were not direct evidence of discrimination, it decided the comments could constitute indirect evidence of bias.

Further, while the defendant claimed the reason for terminating the plaintiff was elimination of a position, the court found that a jury could reasonably find pretext. The age difference and comments, in combination with other facts, could lead a jury to conclude that the defendant hired the new salesman with the intent of having the plaintiff train the new salesman before getting terminated and replaced. The timing of the events was determined to be highly suspicious in particular because the defendant had never employed two inside salesmen in the past.

All of this led the court to find that a triable issue existed. Therefore, the plaintiff was allowed to proceed to trial on his age discrimination claims.

E.D. Michigan Allows Disability Claims From Former Employee Who Took 17-Month Leave to Proceed

The U.S. District Court for the Eastern District of Michigan denied an employer’s motion for summary judgment on a former employee’s claims for disability discrimination in violation of the Americans with Disabilities Act (ADA), the Rehabilitation Act and the Michigan Persons with Disabilities Civil Rights Act (Ferguson v. Wayne County Airport Authority, No. 16-11415, May 8, 2018).

The plaintiff had been an airport maintenance worker for the Wayne County Airport Authority, where his duties included collecting garbage, performing airfield restoration and maintenance, driving trucks and cutting grass. After becoming severely injured in a car crash in 2011, he was placed on leave that lasted for 17 months, during which his job was protected under a collective bargaining agreement.

The plaintiff’s doctor released him in March 2013 to work a full-time schedule with restrictions that included being required to lift no more 10 pounds and not bending past knee height. The doctor also recommended that the employer allow the plaintiff to switch positions as needed and to move to an afternoon shift so he could keep morning physical therapy appointments. The employer took the position that these restrictions would prevent the plaintiff from returning to his previous position and officially terminated his employment on June 6, 2013.

First, the court found that the employer failed to engage in an individualized assessment of its former employee’s request for accommodations. The human resources director did speak to her supervisors regarding the accommodations, but no one spoke to the plaintiff or his doctors regarding the man’s limi-
tions. The employer also failed to provide the plaintiff an opportunity to demonstrate his ability to perform the functions of the job following the car crash.

Second, the court found that a question of fact exists regarding whether the plaintiff could continue performing the essential functions of the position. He argued that even with accommodations, he would remain able to collect garbage, drive and operate vehicles, and repair signs. He further claimed, and other testimony corroborated, that the foremen he would work under had “complete discretion” to determine which employees were assigned to which tasks each day. Thus, the foremen had the discretion to give the plaintiff job assignments that would accommodate his restrictions. The court found that because the employer took a narrow view of the plaintiff’s limitations, it did not provide him the opportunity to display his ability to perform the essential functions of his position.

Last, the court stated that a jury could find that the lifting and bending restrictions requested were reasonable since the employee would still be able to drive large vehicles, which was a significant portion of his job. The employer would only have been required to minimally rearrange certain assignments, and the ADA includes job restructuring as a reasonable accommodation. Accordingly, the court denied the employer’s motion for summary judgment.

E.D. Virginia Holds Terminated Employee Cannot Maintain Discrimination Claims Based on Allegation That Supervisor Encouraged Her Husband to Have an Affair

The U.S. District Court for the Eastern District of Virginia granted an employer’s motion to dismiss an employee’s claims of gender discrimination and retaliation in violation of Title VII of the Civil Rights Act (Ballard v. Bed Bath & Beyond, Inc., No. 3:18cv92-HEH, May 7, 2018).

The plaintiff had worked at Bed Bath & Beyond as an area manager while her husband worked for the same company as a district manager. In her complaint, she alleged that another regional manager who was having an affair with an employee convinced her husband to also have an affair with an employee and subsequently helped her husband cover up his affair. It is undisputed that once the plaintiff learned of her husband’s affair, she complained to human resources about the regional manager’s involvement. The plaintiff also claimed that the regional manager threatened her after she made her report to HR and that he made it clear that he expected her to tolerate her husband’s affair. Soon after that alleged discussion, the plaintiff was demoted from her area manager position and transferred to a lower-performing store and had some of her management functions taken away.

At the new store, another employee, who was the HR director’s son-in-law, began harassing the plaintiff. At one point, the other employee called the plaintiff “a bitch” while at work. The plaintiff complained to no avail and, instead, was subjected to unwarranted discipline. The employer eventually terminated the plaintiff for purposefully failing to process separations of associates and keeping them on the schedule. The plaintiff claimed that this was a common practice.

The plaintiff’s original EEOC charge included allegations of discriminatory and sexual comments made by the co-worker who called her a bitch and allegations that the employer failed to take any corrective measures. The initial charge did not include any mention of the extramarital affair. However, the plaintiff’s Title VII claim before the court included many allegations related to the extramarital affair.

In dismissing these Title VII claims, the court determined that the allegations were not reasonably related to the plaintiff’s EEOC charge and would not have been discovered in the course of the EEOC investigator’s reasonable investigation. Further, the discrimination the plaintiff outlined in her claim diverged significantly from the discrimination outlined in her EEOC charge. In the EEOC charge, the plaintiff claimed that her co-worker harassed her by making discriminatory comments and inappropriate sexual comments. The plaintiff’s Title VII claim, on the other hand, stated that she was forced to endure her husband’s affair as a condition of employment.

The court granted the employer’s motion to dismiss because it determined that the plaintiff’s claims were based on allegations outside of the EEOC charge and could not be maintained as written.

CONTINUED ON PAGE 20
N.D. Mississippi Finds EEOC May Proceed to Trial Based on Employer’s Delayed Response to Harassment Complaints


The plaintiff being represented by the EEOC had been a sales associate at Dollar General. From the beginning of her short employment, she was subjected to sexual harassment by one of the store managers. The harassment included unwanted and offensive physical contact and propositions for sexual acts. The woman made complaints to the lead sales associate and assistant manager, and these complaints were communicated to the district manager and senior HR manager.

The same store manager had been the subject of numerous earlier complaints of harassment. Due in part to that, Dollar General’s response was considered very slow; the manager was not terminated until four months after the woman in this case initially made her complaints.

In its motion for summary judgment, Dollar General argued that the alleged harassment was not severe and pervasive. The court disagreed and found that the list of factual allegations and events were more than enough to create a triable issue of fact. In particular, the former employee asserted salacious allegations, including that the manager rubbed his erect penis against her buttocks and explicitly described the sexual acts he would perform on her. The assistant store manager also testified that she saw a text message from the manager to the woman that contained extremely sexually explicit language.

The employer further claimed that its slow response should not factor into the analysis of liability. The court affirmed that both the procedures the employer had in place to address these complaints and whether it took “prompt remedial action” were relevant. The limited defense of correcting and preventing sexually harassing behavior is not available to employers that do not take prompt and concrete steps when confronted with specific reports of sexual harassment. Otherwise, the court noted, employers would simply enact policies and procedures that “look good on paper” without actually implementing or following them.

The slowness of the employer’s response was particularly worth considering given that it had received several previous complaints of sexual harassment by the same manager and failed to take any corrective actions following those earlier reports. In allowing this case to proceed, the court rejected any reference to the employer’s policy and remained firm in its position that the employer was required to take immediate and preventative corrective measures upon receiving complaints of sexual harassment.

Contact David B. Ritter, partner at Barnes & Thornburg LLP, either by email at david.ritter@btlaw.com or by phone at (312) 214-4862. Learn more at www.btlaw.com, and follow the blogs at www.btcurrentsemployment.com and www.btlaborrelations.com. —N

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Member News

Pam Dollard, IPMA-SCP, who currently serves a member of the IPMA-HR Executive Council and is a past president of the IPMA-HR Central Region, is now the human resources director for the University of Wisconsin–Extension, Cooperative Extension. She previously worked as the HR director for University of Wisconsin–Stevens Point.

The Southern Region gave the following awards during its annual conference in Birmingham, Ala.:

- Edwin Swain Award—Steve Reeves, IPMA-SCP, HR director for the City of Auburn, Ala.
- Dayna Petete Outstanding Chapter Award—Alabama Association of Public Personnel Administrators

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Shape the profession and serve your colleagues by taking a leadership role with the Association. Apply by July 13, 2018 at https://bit.ly/2HNrR0e.

IPMA-HR Recognizes New Members

The Association looks forward to serving and connecting these organizations and individuals who joined during May 2018.

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## 2019 IPMA-HR Presidential Candidates Announced

Cheryl Cepelak, IPMA-SCP, who serves as deputy commissioner for the State of Connecticut Department of Corrections, is running against Larry Gillis, IPMA-SCP, who serves as the ombudsman and an executive advisor for the government of the State of Kentucky. National association members can begin voting on August 10, 2018, and ballots are due by August 24.

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