

What to Do About

PERSONNEL PROBLEMS

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Are Your I-9s All in Good Order?

The U.S. Immigration and Customs Enforcement (ICE) recently sent notices of inspection to a whopping 652 employers—warnings that investigators will descend on those workplaces to check I-9s and other hiring documents for all employees. ICE is seeking to ensure that each is authorized to work in the United States.

Audit your own records—and do it now. One piece of good news is ICE's change in emphasis away from workplace raids and toward (presumably better-controlled and less-aggressive) inspections focusing on documents rather than employees. But observers say that notices of inspection have gone out to more employers so far this year than in all of 2008. And, employers that escape criminal prosecution may still

incur civil fines if ICE believes they knew some of their workers were unauthorized. A good initial preparation is to ensure you have all I-9s in one place, because if ICE conducts an inspection, you will have only 72 hours to round up each and every one of them for presentation at a local ICE office. Filing paper copies in the scattered locations where your employees work, therefore, could present a big problem.

A firm that helps employers verify new hires and maintain valid documents is HireRight. We spoke with Darlene Baker, senior product manager for I-9 Solution and the firm's liaison with the Department of Homeland Security's (DHS) E-Verify system, seeking more advice for employers. Her first response

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PROMOTING STRATEGIC HR

Who Wants to Be a Manager?

The answer to the above question is too few people, according to the *2009 World of Work* study sponsored by Randstad, a global staffing organization and provider of professional employment services. The company's 10th annual survey found a disturbingly high percentage of employees who don't want to be managers. Worse, the portion rejecting the idea is highest among the most experienced and best prepared people in the workforce.

"I don't want all that stress." Avoiding too much stress is the major motivation behind these figures: 51% of all responding employees said they don't want to be managers; by age cohort, 42% of Gen Y, 47% of Gen X, 50% of Boomers, and 68% of Matures rejected the idea of managing. Increased stress is

the #1 reason cited, with "handling disgruntled employees" #2, "increased paperwork" #3, and "having to terminate or lay off employees" #4. Those choices varied only slightly by age, with Gen Y—perhaps because of its focus on social interaction at work—listing the disgruntled employees as their #1 reason. These are the lowest percentages of workers willing to be managers in the 10 years of Randstad's surveys.

Are these negative views the result of misperceptions about managers' experiences? It doesn't appear that's the case. Or, are they caused by the current economic downturn? That, too, doesn't seem to be the reason. Randstad's respondents are generally optimistic,

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was that HR should review every I-9 for completeness and accuracy. Each employee concerned should be contacted immediately to obtain missing information or new authorizations. These corrections can be made on the original form, as long as the HR manager initials all changes. But there's one kind of error, Baker noted, that can't be corrected: You must complete an I-9 within 3 days of a new hire's joining your organization, so if it wasn't done until 5 days after the person started, you can't change it.

Should you use E-Verify? Many experts note that confirming the match between new employees' names and Social Security numbers is a prudent step to take in preparation for an ICE inspection, since that is the mode of verification endorsed by DHS. And, HireRight's Baker reports that the majority of the firm's large clients do use the system. Furthermore, beginning September 8, 2009, all federal contractors and subcontractors are required to use it. But some immigration attorneys caution that the system is not for everyone: Enrolling can be cumbersome, and employees' personal data become much more vulnerable. The databases involved are also subject to error at a rate ranging from 2.5 percent to 4 percent, says Baker.

A better system has been proposed: Called the New Employee Verification Act, the bill is still in Congress and unlikely to be passed this year, but business favors it because (a) it would fund error corrections of the databases, and (b) it aligns with new-hire systems already in use in all 50 states. For more advice on I-9s, see "Compliance Checklist."

with only 1 in 4 employees feeling that his or her job may be eliminated within the next 6 months. That contrasts, however, with the fact that 44% of employers fear they may have to conduct layoffs during the same time frame. Generally, employees are staying motivated and focused, primarily by maintaining a positive attitude.

The news about managers gets worse. At the same time, employees reject the idea of being managers themselves: Employees looking around their workplaces see too few managers, in general, and too few bosses who are good at their jobs. A full 52% of employees feel there are not enough qualified managers in their organizations.

When Randstad asked for the most-valued qualities in good managers, the answers were these: At the top of the list is respectfulness toward employees, with approachability rating just as high. Next in line is being encouraging, with being reasonable rated just as high. Ranking close to those is being level-headed and intelligent. Significantly, the quality of being authoritative, a traditional managerial trait, garnered only 34% of votes, well below the other traits we just listed, which ranged from nearly 90% to just below 70%.

In this very down economy full of uncertainty, employees are looking more than ever to management to forge a better future. But they don't apparently see much evidence that management will rise to the challenge. Randstad maintains that employers need to make being a manager more attractive. For more from the firm about how to do that, see "A Closer Look."

Compliance Checklist

It's 8 a.m.: Do You Know Where Your I-9s Are?

With ICE preparing to chase down work authorizations on thousands of employees across the country, the spotlight is on your new-hire documentation. Here are additional compliance tips from HireRight's Darlene Baker and others.

- ✓ As we mentioned earlier, pull all your I-9s into a central location so they'll be accessible quickly; don't store them at distributed locations.
- ✓ Ensure you have an I-9 for every single employee.
- ✓ Consider purchasing an electronic system to track and manage I-9s. (For example, HireRight's "I-9 Solution" will check each I-9 for completion and data matching. It also creates e-mail alerts for HR regarding authorization documents that are about to expire, and it generates management reports.)
- ✓ If you are in a high-enforcement industry such as agriculture or near-border hospitality, you'd be wise to adopt E-Verify, despite its potential drawbacks.

- ✓ In deciding whether to use E-Verify, assess the risks (of identity theft, for example) and of surprise visits and DHS data mining, as well as the administrative burden of participation.
- ✓ If you do use E-Verify, retain the system's printout with the I-9 to which it's related.
- ✓ Regardless of what systems you adopt, commit to periodic (at least annual) self-audits of I-9s and accompanying documentation. Find and correct mistakes before ICE does.
- ✓ Remember that as long as you can show a thorough, good-faith effort to be in compliance, ICE may well overlook a limited number of incorrigible errors—such as forms completed more than 3 days after employees began work. In the experience of Baker and some immigration lawyers, the agency "is usually reasonable and works with the company."
- ✓ ICE has said that if you are inspected several times with good results, the agency may give you a 3-year moratorium on investigations.

QUESTIONS From Our READERS

‘How Do I Deal with a Problem Employee?’

As most employers do, our subscribers frequently face tricky situations and problematic staffers. Here’s a sampling of the scenarios sent to our legal editors through the medium of BLR’s Ask the Expert service—and how our experts responded.

Q: *Do you have guidelines for handling an employee’s body odor—what to say and not say to avoid a lawsuit?*

A: Under the topic of Dress Codes, we offer the following advice: Arrange for a private, discreet, one-on-one conversation with the employee. Stress that the issue goes beyond a personal one and can be a workplace disruption that must be dealt with. Understand that a medical or diet issue may be responsible for the problem, and be ready to suggest a visit to a doctor or nurse. The employee may quickly try to end the conversation, but you should follow up in a few days to ensure the problem is being resolved.

Q: *One of our employees, unprovoked, called his supervisor by an ugly and profane epithet. Our collective bargaining agreement doesn’t mention such conduct. Can we discipline or fire him for it?*

A: Since you’re in an at-will employment state, you can probably either discipline or terminate the employee. Check your policies and code of conduct: Did his behavior violate any of their terms? Have you applied such policies fairly and consistently? If you don’t have a policy against profanity in the workplace, which can rise to the level of harassment, consider creating one.

Here are four variations on a common theme:

Q1: *In our state, can we fire an employee who was arrested and is now on trial?*

A1: EEOC says that arrest records alone can’t be used to exclude people from jobs—unless someone has been arrested for a suspected crime directly connected with his or her job [see also question #3 in this context]. But you are not obliged to hold open the job of an individual who can’t work because he’s in jail. If you have a policy that states that employees need authorization for absences, you could fire the person on that basis.

Q2: *An employee was arrested, is being held for possible deportation, and has not yet been charged. How long do we have to keep his job open?*

A2: As in answer #1, you are not required to hold the arrested person’s job open.

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A Closer Look



So how do employers go about making management positions more attractive to counter the current negative reaction to them among employees? We asked Randstad’s Eileen Habelow, who is the firm’s senior vice president of organizational development. Here’s what she says Randstad is doing to motivate its own employees to be ready to take on roles as managers.

First, says Habelow, you need a results-oriented culture with the ability to identify individuals’ skills and competencies—and the willingness to tell potential managers what their weaknesses are. The goal of this process is to find the most motivated and competent people to be groomed for management jobs, with the rest given permission and encouragement to reject the idea. Next, organizations should have a budget for the development of every single employee they want to keep. It needn’t be the same amount for everyone, and it shouldn’t include low performers who are on a glide path out of the company. “Put it in tiers,” she says, with the top performers getting the highest investment.

Habelow finds that 8 out of 10 potential managers have a variety of content knowledge and technical skills but lack some of the people skills necessary for effective

managers—desired traits such as respectfulness, approachability, reasonableness, and the ability to encourage subordinates. Development budgets should be ample enough to allow for an occasional employee to be sent outside for a key piece of training. “For example, conflict management is often a skill that organizations can’t teach in-house,” says Habelow.

Do lateral moves accomplish anything for development purposes? “In very limited situations they do,” she feels. “One example is switching a sales and marketing employee from the small client market to the large client market, an experience that can be very developmental, or putting a Web developer in a variety of assignments. But in most cases, it’s not a very useful technique.”

The trickiest development technique, she suggests, is providing ongoing motivation for employees who enjoy their current nonsupervisory jobs and want to stay in them. They, too, need stimulation and raises, but those perks are missing in most organizations for anyone other than employees on the fast track toward management. A few firms, including Randstad, have successfully created what might be called a technical ladder in which such people continue to hone their skills and get promotions in their own specialties. Most of all, Habelow counsels, clearly understand every employee’s goals, and require any potential manager to give great results for at least a year before you invest in him or her.

Questions From Our Readers (cont. from pg. 3)

Q3: I've just discovered that one of our financial employees was arrested about 5 months ago for shoplifting. Now I'm concerned about the company's money. Can I fire her or have her work audited?

A3: Firing someone who's been arrested but not convicted isn't usually advisable. If you have a strict policy saying that someone arrested for a job-related crime won't be hired or can be fired, you have more leeway. But it would be very wise to begin periodic audits of her work now to oversee her handling of finances.

Q4: An employee was accused of shooting someone last night. He was arrested but has been released, and we don't know what will happen. How can we protect our employees? What if the person he shot comes after him?

A4: If he is rearrested, you can terminate him for abandoning his job. If he remains free, you can put him on paid leave and notify him that he cannot be on company property, including the parking lot or other grounds. If you still feel there is a threat, ask your attorney to issue a restraining order against the individual.

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HR Pros Can and Must Be Influential

As the pace of change intensifies—in markets, in employment relationships, in finance, and across the globe—it's more important than ever for HR to gain a seat at the table where strategies are set and decisions made. A recent white paper from the president of OnPoint Consulting discusses the tactics that are the most likely to help all leaders become more influential.

OnPoint's Rick Lepsinger says that as pressure increases on organizations to do more with less, it's crucial for HR influencers to build consensus among other officers and gain the support of many people with competing priorities or conflicting goals. Lepsinger's research has identified 11 "proactive influence tactics" used by the most effective leaders, but 4 of them align best with gaining commitment. So you can imagine using them when you need to get a budget increase, persuade managers to outsource some of the less strategic HR functions, or get approval for an upgraded talent management process. The four tactics are rational persuasion, inspirational appeals, consultation, and collaboration.

Lepsinger advises people who want to enhance their ability to influence others that it's very important to understand what is important to each of those you wish to influence. In a business sense, what are they trying to accomplish? And on a personal level, what are their values, beliefs, and style?

Assuming you're familiar with the organization's management functions and its vision/mission/values, discerning some of that information may not be difficult. The tricky part with someone you don't know well will be identifying the person's style. But getting a handle on most of those things about most of your targets will help you position your proposal or idea more effectively with them. Lepsinger also reminds us that influencing is not a one-shot event. You need to develop personal relationships, establish your credibility, and build trust along the way: They are the keys to gaining buy-in when you need it.

What should you avoid doing? Lepsinger cautions against using influence in a manipulative way to achieve your own interests; one way you might manipulate is by withholding key information from a constituent or stakeholder. Also, he says, it's often tempting to move too quickly into pressure tactics—those should be used only after you've tried everything else, gotten nowhere, and the stakes are high.

Tip: *Don't feel that you have to be the most senior person in the room to exert influence and get people to do what needs to be done. Understand that the ability to influence is based not only on the organizational hierarchy but also on behavioral tactics.*

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