

What to Do About

PERSONNEL PROBLEMS

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Don't Be in COBRA Denial!

Robert Meyers, a licensed insurance professional and former HR manager, warned his listeners at the recent Society for Human Resources Management annual convention that denial is a common reaction to the healthcare coverage continuation provisions of the 1985 Consolidated Omnibus Budget Reconciliation Act (COBRA). He meant that COBRA can be an unpleasant or painful reality that one doesn't want to acknowledge.

Beware denial of claims. Meyers, who founded and heads the consulting firm CobraGuard, noted, "People who ask for COBRA really *need* COBRA." He asserted that denying a claim is the most common pitfall. Claims are paradoxical for employers: Employees who request continuation of coverage

do so because they or their dependents have ongoing healthcare needs. So, employers and their insurance carriers can expect a COBRA claim to be, on average, 150 percent of the amount of other employees' claims. While that's an unpleasant reality that may prompt one to deny the coverage or the claim, legal penalties await those who deny without justification.

Meyers reviewed the history of COBRA, which became effective in 1986, pointing to several sets of subsequent proposed and final interpretive regulations and the changes and expansions they brought. Among many clarifications, final regs of 2001 created procedures for "insignificant underpayments." That means the

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Start Revamping Performance Management Now

Randy Pennington thinks most organizations do discipline all wrong. He spoke at the recent Society for Human Resource Management national convention, asserting, "The manner in which we address poor performance is the ultimate test of our commitment to people, performance, and professionalism." Pennington, consultant and head of Pennington Performance Group, passionately believes it should be a tool for coaching poor performers toward improvement and retention.

Traditional discipline is all about 'bad.' Instead, he points out, employees, supervisors, and the entire organization typically see discipline as a tool for getting rid of people. Usually, employees consider discipline as punitive and often

unfair, supervisors see it as the hoops they must jump through before firing someone, and the organization structures the tool to be used defensibly, to get rid of people without incurring claims of wrongful discharge. Pennington feels all those assessments are pretty accurate, and he wants to help HR change the whole focus. Here's what he says is wrong with the traditional approach:

- **It poses philosophical problems:** Organizations treat people worse and hope they'll improve—a basic contradiction. Organizations feel they must make an example of poor performance. They believe that the fear of losing one's job will make one change.

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participant pays most, but not all, of a monthly premium, leaving it \$50 or less, or 10 percent, short—whichever is less. Unless you notify the individual within 30 days of the gap, you must treat the payment as complete. Other changes in the 2004 set included setting a 30-day limit for employees to give notice of a qualifying event and a 14-day limit for employers to notify employees of their right to or ineligibility for COBRA continuation.

'COBRA pearls.' Meyers described his 'COBRA pearls'—principles he feels are so crucial that HR professionals who do COBRA administration should keep them in plain sight at all times. (And a show of hands among listeners suggested that most HR attendees handle their own administration in-house.) The first is always to check with your insurance carriers and read their summary plan descriptions to identify exactly how they will approach COBRA for each covered plan (medical, dental, vision, flexible spending account, employee assistance, and others) and each potential participant.

The second is never to try to perform COBRA administration alone: Consult with carriers, colleagues, and other available resources, including subscribing to at least one periodical on the topic. The third is to adopt COBRA policies and procedures based on sound administrative principles and guidelines: Knowing the COBRA regs and administering the program practically are two different things. Another fundamental truth is that the employer and only the employer will be held accountable for COBRA administration—never a broker or third-party administrator. For more information, see the 'Compliance Checklist.'

- **It involves a problematic process:** The system focuses exclusively on defensibility. Consistency is employed at the expense of fairness. There's no method of recognizing improvement—a mistake is forever.
- **It poses people problems:** Supervisors wait too long to address problems. Managers use the system to confirm conclusions they've already reached. Supervisors are ill-equipped to conduct important conversations with poor performers.

Noting that the word discipline has its roots in the word disciple, which means to teach, Pennington wants the focus of the process to shift from punishment to coaching. Over time, he says, imposed discipline turns into personal discipline. But most organizations focus only on punishment as discipline—verbal warnings, written warnings, suspensions without pay, last-chance warnings, and termination. Pennington might ask, 'Is that any way to guide and coach?'

There's a worse problem with scolding and suspension. Most organizations have no mechanism for allowing employees to improve. So, a warning delivered at any time in a person's career is very likely to stay in his or her personnel file forever. As Pennington quips, "We as humans like to say we bury the hatchet. But then we leave the handle sticking out of the ground in case we need it again later."

Instead, we need to learn to recognize improvement in an employee's performance and to get the old offense off the books. An early step every organization should take is to create a schedule for checking the current validity of a warning—and removing it from the file if deserved. For more on Pennington's discipline approach, see "A Closer Look."

Compliance Checklist

Tips for Effective COBRA Administration

Robert Meyers of CobraGuard packed his SHRM presentation with instructions for effective COBRA administration. Just a sampling of his advice included:

- ✓ You can charge COBRA participants 102 percent of group premiums for coverage; if any participant is disabled and thus entitled to an 11-month extension after the initial 18 months, he or she may be charged 150 percent of the premium during the extension.
- ✓ When you mail COBRA notices to the homes of employees or dependents, you don't need a return receipt; first class proof of mailing is cheaper and just as good.
- ✓ The cheapest way to document that you sent a COBRA notice is to keep a copy of the mailing envelope in the employee's file.

- ✓ If you fire someone for gross misconduct, you *don't* need to offer COBRA benefits.
- ✓ Never take an employee's word that COBRA coverage for a spouse should be cancelled, regardless of the individual's assertion that a legal separation or divorce is imminent. Require a copy of the document (confirming the separation or divorce) before you cancel. (Meyers was peppered with audience questions about such situations; apparently, spats with spouses and vindictive requests for cancellation are common.)

Asked how many types of COBRA notices there are, Meyers grinned and proceeded to list just the first 21 that came to his mind, noting that there are probably more—and that it's unlikely that all would ever apply to a single family.

Is Refusing Accommodation Unreasonable?

Most of you know the phrase ‘reasonable accommodation,’ which we presented in the context of religious toleration in our January HR Conundrum. An applicant for the position of finance director for a small town is surprised to learn that she will be required to attend several Saturday-morning budget meetings each year. Her faith, the Seventh-day Adventist Church, requires her to observe her weekly Sabbath from sundown Friday to sundown Saturday. So she offers the town mayor three possible accommodations. He refuses all of them and hires someone else. We asked if you thought he did right—or at least acted in an acceptable manner.

Jim Garrett, human resources VP at Middlesex Water Co. in Iselin, New Jersey, voted for the applicant (who became the plaintiff when she sued). Garrett felt two of her suggested alternatives were reasonable: Hold the budget sessions on Tuesday evenings, when trustees often met, or allow her to send another finance department member to Saturday workshops. Her third suggestion—meeting on Sundays instead of Saturdays—was rejected by the mayor and Garrett, because, as Garrett said, “Transferring the religious obligation problem to the

board by holding the meetings on Sunday would not be reasonable if the board members attended religious services on that day.”

Cristina-Alexa Manolache, in human resources with Widex Hearing Aid Co. in Long Island City, New York, also voted for the plaintiff. Manolache didn’t buy the mayor’s objections to either Tuesday evening meetings (he said board members would be too tired after the workday) or Sunday meetings (because they put other members’ religious faiths above those of the applicant). She did feel the mayor’s contention that no one but the finance director could negotiate key budget matters might be reasonable. Garrett disagreed, feeling that her stand-in could report to the finance director and get her sign-off soon after the session.

Yvette Wilmot, vice president of Sarracco Mechanical Services in Naugatuck, Connecticut, sided with the defendants. She wrote, “The meeting times, set by historic protocol, in no way by virtue of their timing, are intended to discriminate against any particular religion.” Wilmot added that the town should not be asked to redesign an aspect of the job because one candidate objected to it, although she did find the mayor’s refusal of Sunday meetings “insensitive.”

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A Closer Look

Randy Pennington offers what might be called a new paradigm for discipline. Contrasting the characteristics of his ‘positive performance approach’ with those of the traditional mode, he stresses especially that results and relationships, rather than compliance with rules and regulations, should be the goal of a good system. That is, simple obedience to an organization’s rules and regulations is the bare minimum to be expected of an employee and the least of the goals of performance management. Coaching and correction should be the continuous core—not just annually or semiannually—of performance management.

Pennington also points out that in helping supervisors to design objectives for each job, HR should match them—and all its own processes—to the organization’s mission, vision, and values. When that happens, he asserts that getting a seat for HR at top management’s table should be a slam-dunk. There should be only three levels of discipline (Pennington jokes about semifinal, pre-final, and final-final warnings), and terms like warning and reprimand should be avoided in favor of the more-neutral first, second, and third levels of notices.

In addition, performance measurements should be grouped into as few buckets as possible, ideally no more

than three. For example, many firms measure both tardiness and absence but ought to combine them into the category of attendance. Three categories of metrics that Pennington suggests are attendance, job performance, and conduct/safety. One of Pennington’s clients has only two categories—job performance and personal effectiveness.

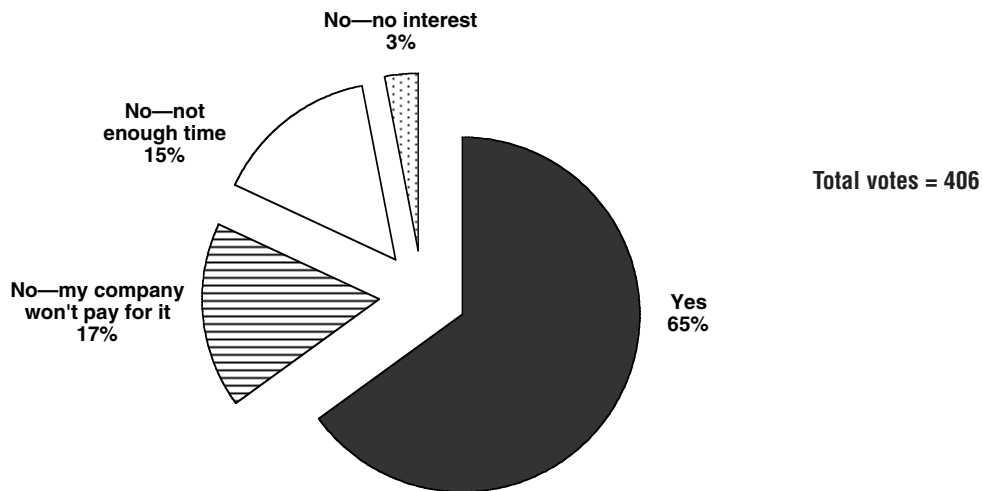
Crucial to the implementation of positive performance management is training supervisors to converse effectively with subordinates. The boss should sit down with a poor performer and describe what the organization expects, compared with the employee’s actual conduct. Then the supervisor should ask why the gap is occurring. Three types of answers are typical: ‘You’re right; I need to do better’; a description of a family or other personal problem that’s interfering; or the familiar ‘yeah buts.’

Offering all available assistance with a real problem is important for positive relationships. Meet the ‘yeah buts’ with a technique we’ve heard called ‘broken record.’ To every objection the employee raises, the supervisor replies, “I understand. But here’s what the company needs you to do in order to support our mission.” Eventually, that will gain at least verbal compliance from most people. Conclude the conversation with a ‘thank you’ to the employee, leaving things on a positive note.

SURVEY SAYS...

Q. Have you attended a conference or seminar for HR professionals within the past year?

A.



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HR Conundrum (cont. from pg. 3)

The Illinois federal judge who heard this case agreed, however, with Garrett and Manolache (*Filinovich v. Claar*, 10/15/05). The applicant was Alice Filinovich, and she sued Mayor Roger Claar and the Village of Bolingbrook for religious discrimination. Claar and the village argued that accommodating Filinovich would have been an "undue hardship," but the court ruled that the claim should be decided by a jury.

And here's the puzzle for March, from queries submitted by BLR subscribers. An HR manager discovered that an employee was an illegal alien when it turned out the Social Security number he had provided was not his. So the person was terminated. But, having participated in the company's healthcare coverage plan, he asked for continued coverage under COBRA. Did the company need to comply with his request? Let us know your opinions by e-mailing editors@blr.com. We'll tell you what respondents had to say—and how our attorneys advised the HR manager—in our May issue.

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