



TWIN CITIES HUMAN RESOURCE ASSOCIATION™

N E W S & V I E W S

January/February 2005

VOLUME VII NUMBER 3

There's a Right Way, a Wrong Way, and a Very Wrong Way to Handle Frequently Asked Questions During Workplace Investigations

by John A. Mack

Being prepared for frequently asked questions during workplace investigations is essential for conducting thorough, informative investigations. In addition to helping establish your credibility as fact-finder, having the appropriate responses eliminates avenues to discredit the investigation later. As with any workplace issue, if you have a policy that specifically addresses the issue or you have appropriately addressed it before, be consistent with policy and past practice.

1. Do I need a lawyer?

Very inappropriate response: "If I hear you've been talking to a lawyer, you're outta here."

Inappropriate response: "Why waste the time and money getting a lawyer involved? We can figure this out ourselves."

Appropriate response: "You have the right to speak with counsel if you choose."

Discussion: Do not discourage witnesses from seeking legal advice. If this requires you to reschedule an interview, do it. If witnesses are pressed into continuing an interview after expressing an interest in first talking to a lawyer, assume you will be hearing from the witness's attorney in the near future. Also, witnesses may already know they have a right to consult a lawyer and the question is designed to test your credibility or lay the grounds for challenging the investigation. If an attorney becomes involved it should not affect the manner in which you conduct the investigation. Treat the

attorney with respect and professionalism. As a fact-finder your objective is to find out what the witness knows. Being argumentative with a lawyer or witness will diminish your neutrality and credibility. In addition, raising the ire of the lawyer and witness will cause them to be uncooperative and less than forthcoming. Lastly, never provide legal advice to witnesses, even if you are an attorney. Attorneys are barred from giving advice, other than advice to secure counsel, to a person not represented by counsel on issues that have "a reasonable possibility of being in conflict with the interests of the client." (Rule 4.3(c) of the Minnesota Rules of Professional Conduct).

2. Can I tape record the interview?

Very inappropriate response: "Ah, looking for some evidence for the trial, are we?"

Inappropriate response: "Not a chance. I don't want you running all over the office letting everyone know what questions I'm asking."

Appropriate response: "Tape recording is not allowed, but you're welcome to take notes as I am."

Discussion: Audio or videotaping of interviews is not recommended. People are often apprehensive about speaking to investigators to begin with and tape recording only adds to a witness's discomfort. Taping also opens the door to possible technical problems, claims of an incomplete record, confidentiality concerns, and manipulation of the recording. If the issue arises, make sure to ask why

the witness wants to tape the interview. If it is for personal use, offer the witness the option of taking notes. If tape recording is not allowed, notify witnesses of this at the beginning of the interviews and ask if they are recording the interview. In the event a witness denies taping but does so anyway that information can be used later if necessary to cast doubt on the witness's honesty or motivation. If you absolutely need the witness's information, you may have to allow tape recording. When faced with such situations, consider using a court reporter to ensure there is one, accurate record of the interview.

3. Can someone else attend the interview with me?

Very inappropriate response: "Why, do you need a baby-sitter to hold your hand?"

Inappropriate response: "Only if I approve the person beforehand."

Appropriate response: "Our policy is fill in your policy."

Discussion: Employers should have a policy already in place regarding the attendance of others at investigatory interviews. Generally, interviews should take place without others present to maintain confidentiality and control over the fact gathering. However, if you need the information from a witness you may have to allow others to attend interviews. Fortunately observers often provide valuable information which might otherwise have gone undisclosed. If observers do attend, continue as if the observer was not there (the "potted plant" approach). If

(continued on page 13)



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AFFILIATE OF



News & Views

The Official Newsletter of
the Twin Cities
Human Resource Association

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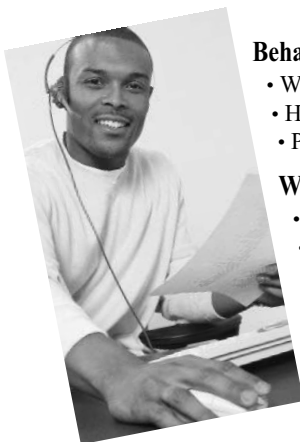
This newsletter is produced on a bimonthly basis and distributed free of charge to TCHRA members. If you would like to submit material or you have questions, please direct materials and inquiries to:

Leah Gajria
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For more information, call 612-348-5618 or visit our Web site at HennepinCommunityHealth.org/Health@Work



Deb Stachowski, SPHR;
TCHRA President

Greetings!

The Twin Cities Human Resource Association plans to participate in the 2005 HR Games. "What are the HR Games?" you ask. The HR Games is an annual event to assist students in preparing for certification. The games are subject to SHRM's Code of Sportsmanship and State/Regional Rules and Regulations can be found at www.shrm.org. It is a competition, run "Jeopardy style", between SHRM student chapters focusing on categories similar to the ones used in the HRCI PHR certification exam. The teams pick point levels from categories including Management Practices, Selection and Recruitment, Training and Development, Compensation and Benefits, Employee/Labor Relations or Health, Safety and Security, and then have 15 seconds after

the question is read to confer and respond. A team consists of undergraduate students or recent graduates of an undergraduate program and winners receive scholarships. All members must be SHRM members and members of an SHRM student chapter.

In the state competition in 2004, first place went to U of M-Duluth, and second place went to St. Cloud State. First and second place winners go on to regional competition. Regional winners go on to compete at the SHRM Annual Conference.

Although, at the time of this article submission, a location for the upcoming games has not been set, the state games should be held in late February or early March. The regional competition is scheduled for April 8-9, 2005.

Amy Roelofs is the TCHRA Vice President of Community and Government Relations. This group is broken down into three areas: College/University Relations, Community Relations and Government Relations. The College/University Relations Team, led by Team Lead Debbie Fischer and supported by Sara Biskey, Jim Tift, Megan McCabe and Amy Benson, will be leading TCHRA's involvement with the HR Games this year. We are excited in being more involved this year, with hopes of hosting the HR Games in 2006! If you have questions, please feel free to contact Debbie or any of the team members for additional information.

— Deb —



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Building Search Committee Consensus

by Chandler McCoy

Imagine this: You find yourself responsible for coordinating a search for a highly visible position within your organization. There are several decision makers on the search committee and you are having difficulty gaining their consensus on the “must have” versus “nice to have” qualifications. Then, when a decision is pending on a final candidate, you discover that the search committee doesn’t agree on what – or who – they are looking for and you have to start the search process all over again.

Sooner or later, most human relations professionals will find themselves in this same situation. Getting consensus among the search committee is a critical – but often overlooked – first step to a successful employment search. Without consensus, you’re likely to waste precious time and resources, or worse yet, hire the wrong person for the job.

Here are a few tips to help you gain consensus among the search committee before the search begins:

1. Develop a survey on paper that includes questions regarding the position qualifications and other subtleties (energy level, management style, industry experience, local vs. relocation, individual contributor vs. promotable leader, etc.).
2. Give each of these questions a scale – 1 to 10, low to high, or not important to very important.

3. Make the qualification survey brief, requiring no more than 15 minutes to complete.
4. Have each member of the search committee and all other influencers complete the survey.
5. Compile the results and look for inconsistencies in the answers.
6. Review inconsistencies with the entire search committee and come to an agreement on the relative importance of each question.
7. Begin the search process.

By following these simple steps prior to each and every employment search, your company stands to gain consensus from each and every decision-maker involved in the hiring process before the process even begins. With consensus and preparation, your employment searches will be simplified, more effective and efficient, and your search committee is less likely to experience conflict or make mistakes during the hiring process.

Make sure your company is making the right hire; take the time to gain consensus to determine who and what your company wants and needs.

Chandler McCoy is the president of Sathe Executive Search. He can be reached at (952) 546-2100 or cmccoy@sathe.com.



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For more information about FGI's programs, contact Jamie Clark at (612) 338-3690 or by email at jclark@fgiworld.com.



TRENDS IN RELOCATION

by Pat O'Connor

With a company's eye on the bottom line and the trend to apply metrics to all facets of the business, the relocation industry is going through a paradigm shift as the industry responds to the demands of corporations, the business environment, and insurance industry practices.

There are several trends within the relocation industry that modern company's should be aware of; the trends include CLUE Reporting, renting versus home buying, personal and financial costs of relocating, and less time to accept new positions.

C.L.U.E. Report

Homeowners insurance is a necessary requirement for real estate ownership. In exchange for an annual premium, the insurance company promises to pay financial losses on the property. In the past few years, insurance company portfolio's have taken a hit from the heightened awareness of mold, stucco and water issues, as well as the wrath of Mother Nature with hurricanes and uncontrolled forest fires.

To combat their losses, insurance companies now use a central database known as C.L.U.E. (Comprehensive Loss Underwriting Exchange), which records claims and policies, and is used to produce a Property Loss Report that lists data for individual properties and homeowners. The C.L.U.E. contains 5 years of historical data tracking 27 causes of a claim, including, but not limited to, when the claim was made, all inquiries associated with the claim, and even if the claim was never submitted.

As a result, the insurance company can look at the risk history of a property or the insured to decide whether they will reissue a policy and the cost of the new policy. In some states insurance companies can revoke a recently issued policy within 60 days of issuance based on underwriting issues as uncovered on the C.L.U.E. Report.

How does this report affect relocation? In some areas sellers are being asked to provide a C.L.U.E Report as part of the disclosure process. This report may have the potential to mislead buyers, taking away the real disclosure form that is required when selling a home. Since mortgage companies require insurance, some properties may not be considered insurable due to past claims or because of the inquiries of the previous property owner. Buyers may not be able to obtain a mortgage for the property if it cannot properly be insured. As with a personal credit report, it is important to make sure that a home's C.L.U.E. Report contains accurate data prior selling or purchasing a home. The trend will be for homeowners to pay small claims out of pocket, thereby reserving homeowner's policy for catastrophic claims. This trend may impact the transferees ability to buy or sell a home thus complicating the relocation process.

Rent vs. Buy

There has been a greater element of uncertainty with new transferees regarding whether to purchase or rent a home in their new location. The trend is for transferees to

permanently rent or initially rent for a longer period of time before committing to the purchase of a home. The employee is not only checking out the viability of the new location, but also the financial stability of the company. With total renters increasing to 34% of all relocations in 2003, companies are beginning to address this group of transferees by providing fee-paid rental assistance.

Personal and Financial Costs of Relocating

Another major factor affecting relocation is the impact moving has on the family and the cost of living in the designated city. Relocation has a greater impact on dual career (earning) families than single career families. The reason for this is that it is not always easy for both partners to find work in the new location. In a tighter job market, trailing partners may choose not to relocate creating additional stress on the family unit. Likewise for both single and dual career families the timing of a move may impact the decision of whether to move all or part of a family. For example families may choose to live apart due to schooling and other factors related to child rearing. For some families children may have the final say in whether the family member will or will not accept the new position which requires a move.

Additionally the high cost of living in major metropolitan areas has become a deciding factor in whether or not an individual relocates. This trend has had an impact on relocation within the greater Twin Cities area. There is an urban myth that you can "buy the farm" in the Midwest for little to nothing. Sticker shock has become the issue for the Twin Cities more so than the age-old climate factor, with many transferees declining positions because of it. Companies should be cognizant of the fact that the decision to transfer will impact the employee personally, financially, and professionally.

Less Time to Accept New Position

The final trend in relocation is that corporations are tending to give candidates less time to accept a position at a new location. Trends show that employees have less than two weeks to accept a new transfer position, with an average of 27 additional days to report to the new position location – 4 days fewer than last year. For many people this simply is not enough time to make a life changing decision so they opt not to relocate versus moving without much notice.

Relocation is not only about finding and moving the right candidate. It is about helping individuals and families thrive in their new environments both personally and professionally. Companies should be aware of the current relocation trends affecting their employees so that they may be better prepared to assist the employee in making a smooth transition while keeping an eye on the bottom line. Relocation mirrors other practices in HR. It's about service, value, cost, and metrics.

Pat O'Connor is the VP of Business Development for Burnet Relocation. For more information please contact her at poconnor@cbburnet.com

HR Basics from SHRM

Ring in the New Year with the following helpful hints from SHRM Online. These “HR Basics” are designed to help you and your Managers create a positive and healthy work environment.

PERFORMANCE IMPROVEMENT HINTS

During employee’s first month:

- Review organization’s strategic plan or mission
- Discuss department/division goals
- Establish individual goals and action steps
- Discuss expectations of quality and quantity of work, interpersonal skills, reliability and other performance factors typically reviewed

After first three months:

- Review individual goals and action steps
- Review employee performance to date either formally or informally
- Discuss formal performance evaluation process

On a daily basis:

- Note specific, job-related behaviors which are both positive and negative and keep for future reference
- Immediately provide feedback on areas for improvement as problems occur
- Openly praise positive behavior and good performance
- Offer opportunities to discuss performance as issues arise

- Don’t go solely by memory - base the review on accurate and factual data
- Avoid the “halo” and “horns” effects. Just because the employee performs badly in one area does not make his overall performance bad. The same goes for good performance.
- Length of service or job grade does not necessarily mean better performance. Look carefully at the individual’s performance within that job.
- Avoid bias about an employee based on your personal feelings for that individual.
- Don’t base current performance on past performance. Look at the current period being reviewed.
- Don’t overrate a poor performer as a motivational tool.
- Not all individuals are the same. Analyze each employee carefully; establish performance ranking.
- Don’t rush through the appraisal. Take time to record accurate information, which truly reflects the individual’s performance.
- Don’t be afraid to provide truthful information.

PITFALLS TO AVOID WHEN APPRAISING AN EMPLOYEE

- Don’t focus on one specific incident - review the entire period which the appraisal covers

For more “HR Basics” visit
http://www.shrm.org/hrresources/basic_published.

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Attracting Out of Town Candidates to the Twin Cities

DATE: Thursday, January 13, 2005

TIME: 7:30-8:00 AM (Registration and Continental Breakfast)
8:00-9:30 AM (Program)

LOCATION: Byerlys at Ridgedale
Community Room
13081 Ridgedale Drive, Minnetonka

COST: **\$40 Pre-registered TCHRA Member**
\$45 Pre-registered non-member
\$50 All Walk-ins

Program: Some out of town candidates quiver at the thought of moving to the Twin Cities. But,

Did you know...

Minnesotans spend more time outdoors than in any other state.

We have more golf courses and golfers than any other state in the union.

We're second only to New York in live theatre seats.

We've been voted the most livable state in the country for the seventh year in a row.

Do you know...

How many fortune 500 companies and privately held companies are located in the Twin Cities? (This is of interest for relocating family members)

How our schools compare?

How our health care compares?

There are many reasons that make the Twin Cities a highly desirable area to live, despite the winter weather. What kind of information can you provide to candidates to convince them to make the move? What cost effective techniques can you use to give candidates a positive impression of the Twin Cities? Pat O'Connor and Sandy Ruud with Burnet Relocation will provide information to help you sell the Twin Cities to your candidates. They can show you how to give candidates useful information on the differences between the city they are moving from and the Twin Cities area. This information is especially helpful as companies strive to create and implement strategies aimed toward attracting and retaining top talent, and containing costs.

Presenters: Pat O'Connor, V.P. Business Development
Sandy Ruud, Relocation Counselor

Pat O'Connor has been with Burnet Relocation since 1997, and has 14 years of progressive human resources experience in the manufacturing and service industries. Pat is closely involved with relocation policy and development discussions with clients. She has been instrumental in refining all elements of service delivery to outsourcing clients – from policy administration, to home sale programs, to expense management.

Sandy Ruud has seven years of relocation experience. She interviews families who are relocating to assist them with their specific needs. After providing comprehensive, printed information, giving a face-to-face demographic overview of the Twin Cities, and matching families with the most appropriate Sales Associate, Sandy remains available until the move is complete.

REGISTRATION: Registration may be made by contacting our website at www.tchra.org or calling the TCHRA office at 952-432-7755.

QUESTIONS: Contact Sonja Dalbey, phone 612-201-8312, e-mail skdalbey@cbburnet.com

Opening Your Doors to Diversity

DATE: Thursday, January 20, 2005

TIME: 7:30-8:00 AM (Registration and Continental Breakfast)
8:00-9:45 AM (Keynote Program)
9:45-10:00 AM (Question and Answer Session)

LOCATION: Carlson School of Management
(Industrial Relations Center is providing the space)
University of Minnesota's West Bank Campus – 321 19th Avenue South
Carlson Private Dining Room

PARKING: Free parking will be available in the 19th Avenue Ramp across the street to the west and is connected to Carlson via a skyway. Give your name to the attendant as you leave the parking ramp. Hourly-rate parking is also available in the U of M 21st Avenue Ramp across the street to the southeast, or in nearby surface lots.

COST: \$40 **Pre-registered TCHRA Member**
\$45 **Pre-registered non-member**
\$50 **All Walk-ins**

Program: HR professionals understand that diversity is essential to our businesses. We take time to craft our diversity messages and employee trainings so our staff understands how strongly we feel. So why isn't your workplace more diverse? This program helps you take diversity to the next level. This program will show you the candidates' perspectives, how to improve your recruitment and selection process, and how to prepare your company for the future.

Presenters: Cindy Laughlin, SPHR, Senior Manager and Lila Kelly, Principal Consultant and Trainer

Cindy Laughlin, SPHR, has over 25 years as a leader and professional in diverse settings such as higher education, sales and marketing, training, coaching, human resources and multicultural relations. As Senior Manager at Best Buy Inc. she has managed the areas of Multicultural Relations, Work-life and Employee Relations for this retailer. Currently, Cindy develops processes that strengthen the company's market leadership by identifying ways to integrate multiculturalism into the company's major business strategies. She is also responsible for helping the company effectively manage diverse talent and emphasize individual strengths to enhance cross functional work team performance. Cindy graduated from Springfield College with a master's degree in sports psychology and motor learning.

Lila Kelly, Principal Consultant and Trainer of Lila Kelly Associates, combines over 20 years experience in the areas of diversity, recruiting and selection, career transition, and human resource management. She offers a unique approach to integrate diversity into the recruitment and selection process, which helps interviewers and hiring managers "see through the eyes" of diverse applicants. Lila also works with organizations to provide diversity education and planning, design a structured interview process, centralize recruiting efforts, and provide outplacement services. Lila teaches a college course on Managing a Diverse Workforce, and is the VP of Diversity on the board for Human Resource Professionals of Minnesota. She holds a B.A. degree in business management and communications from Metropolitan State University in St. Paul and a M.A. degree in Human Development from St. Mary's University in Minneapolis.

REGISTRATION: Registration may be made by contacting our website at www.tchra.org or calling the TCHRA office at 952-432-7755.

QUESTIONS: Contact Lucia Hamilton, 952-921-8499,
lhilton@copperbayconsulting.com

TCHRA PROGRAM GUIDE

“We Really Need to Talk!”

DATE: Thursday, February 10, 2005

TIME: 11:30 AM-12:00 PM (Registration)
12:00-1:30 PM (Program)

LOCATION: Rider Bennett LLP
33 South Sixth Street, Suite 4900
(Parking will be validated)

COST: \$40 Pre-registered TCHRA Member
\$45 Pre-registered non-member
\$50 All Walk-ins

Program: It is not news to any of our members that “Communication Breakdown and Barriers” continually ranks as one of the leading issues among employees. You will enjoy a humorous and thought provoking session as Rick Speckmann guides us through new concepts elevating effective communication in the workplace that will significantly enhance employee performance and productivity.

Presenter: Rick Speckmann, Emperform

Rick Speckmann’s experience spans nine different industries including: banking, publishing, design/build construction, art framing and distribution, silkscreen printing, and executive search interviewing an estimated 20,000 business professionals. Over the previous twenty years as an owner/partner of five companies that experienced double digit growth over twenty years Rick is frequently quoted by the media for his knowledge of building high performance work cultures. Following two years of development, his newest venture EmPerform opened its doors in 2004. The company provides “elevated return on employee” services to growth aggressive companies.

REGISTRATION: Registration may be made by contacting our website at www.tchra.org or by calling the TCHRA office at 952-432-7755.

QUESTIONS: Contact Amy Taber, Employee Relations Committee, 612-340-8903, actaber@riderlaw.com



Succession Management: Accelerating the Leadership Pipeline

DATE: Wednesday, February 16, 2005

TIME: 7:30-8:00 AM (Registration and Continental Breakfast)
8:00-9:00 AM (Program)

LOCATION: Augsburg Fortress
100 South Fifth Street, Suite 700
Minneapolis, MN 55402

Directions: From I-35W N, Merge onto MN-65 N via the exit on the LEFT toward DOWNTOWN EXITS, Take the MN-65/5TH AVE S exit on the LEFT, Turn SLIGHT LEFT onto S 5TH AVE/MN-65 N/5TH AVE S, Turn LEFT onto S 7TH ST/MN-55 W/7TH ST S, Turn RIGHT onto MARQUETTE AVE, Park and go to 100 South 5th Street. Take the elevator to the 7th Floor.

COST: \$40 **Pre-registered TCHRA Member**
\$45 **Pre-registered non-member**
\$50 **All Walk-ins**

Program: Succession management is “top of mind” for Boards, CEOs, and HR executives. How do we manage business risk around leadership continuity? What are leading companies doing to create competitive advantage through the attraction, development and retention of top leadership talent? What is required to successfully develop the bench-strength to achieve sustainable, double-digit business growth? This forum will look at recent succession management research and trends, changing roles and expectations of Boards, CEO’s, executives and HR in succession management, and emerging practices in accelerating the development of the leadership pipeline.

Targeted Audience:

- Presidents/CEO’s, CFO’s, Senior Business and HR Leaders

Learning Objectives:

- Understand the emerging trends and practices around succession management in leading companies
- Identify the distinctive roles of Boards, CEO’s, executive management and HR in managing succession
- Define four key strategies for accelerating the development your organization’s leadership pipeline
- Learn practical steps leading companies are taking to turn “talking about succession management” into real commitment and results

Presenter: Kathleen (Kay) Nussbaum, Senior Vice President for Right Management Consultants

Kathleen (Kay) Nussbaum leads Right Management’s organizational consulting practice for the Minnesota / Dakotas region. Kay has over 25 years of experience in the field of executive and leadership development. She brings a Board, business executive and HR perspective to the challenges of CEO succession, executive development and bench-strength development. As an external management consultant, Kay has worked across industry sectors, including Fortune 100, high growth companies and not-for-profits. She currently consults with Boards, CEO’s and executives, with a focus on strategy execution, executive/leadership development, M&A and large-scale transformational change. Kay holds a Masters of Science in Organization Development from American University in Washington D.C.

REGISTRATION: Registration may be made by contacting our website at www.tchra.org or calling the TCHRA office at 952-432-7755.

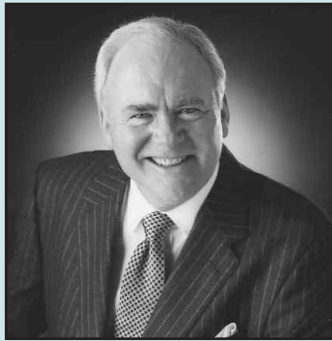
QUESTIONS: Contact Sandy Middendorf, (612) 330-3333, or James Smith, (952) 857-2238.

TCHRA – CONFERENCE

INCLUDING 3-HOUR TRAINING WORKSHOP

KEY NOTE SPEAKER — DICK GROTE

Building Performance Excellence: Roses, Daisies and Weeds



DATE: APRIL 6, 2005

TIME: 12:00 PM – 5:00 PM

WHERE: Nicollet Island Inn

Lunch served at 12:00 pm (Networking)

Pre-registration cost: (includes lunch & training materials)

Before February 18, 2005

\$125.00/members (early registration discount)

\$140.00/non-members (early registration discount)

• After February 18, 2005 – \$150.00/members

\$165.00/non-members

To register please visit www.tchra.org or call the TCHRA Office at (952) 432-7755!

Every organization contains three groups of people:

- ▶ a small number of high-performing stars,
- ▶ a huge preponderance of good solid performers,
- ▶ and a minuscule minority of misfits and malcontents.

In other words... **ROSES, DAISIES and WEEDS.**

See next page! ➡

Building Performance Excellence: Roses, Daisies and Weeds

(continued from page 11)

In this high velocity, cheerful and witty keynote address, Dick Grote will first show us how to re-recruit our Roses and retain our best performers. He will then describe how we can motivate our daisies and give us practical and immediately useful tools that will build performance excellence. Finally, he will demonstrate the specific techniques that we can use to turn around problem employees and get them to take personal responsibility for their own performance and behavior.

With warm good humor, Dick will provide a look at what the best-managed and most-admired organizations and managers are doing with all three types of employee. A platform master, Dick will provide simple and practical techniques for building effective people-management practices into your day-to-day operations.

Managing People: Best Practices, New Directions (training workshop)

.....

What's going on behind the scenes at America's best managed, most-respected organizations? What are they doing to manage human performance that ordinary companies aren't doing? In this special workshop, aimed at the experienced HR professional, Dick Grote will reveal the practices and procedures at the most sophisticated and successful companies in the country.

Among the topics Dick will address are:

- How a world-class performance management system operates, and how it differs from the procedures used by average companies.
- What the specific elements of a best-practice system are.
- Current "hot topics" in performance management, including:
 - ▶ Competency development procedures
 - ▶ Forced ranking and forced distribution
 - ▶ Rater reliability / calibration procedures
- Immediate changes — simple and easy changes — your company can make which will increase the effectiveness of your existing performance management practices.
- How to help your managers solve their two most annoying "people problems": absenteeism and bad attitudes.
- A step-by-step guide to confronting and correcting the marginal performer.
- How to get your senior executive team and line managers to be vocal performance management champions.

About Dick Grote

Dick Grote is Chairman and CEO of Grote Consulting Corporation in Dallas, Texas. He is the developer of GroteApproach, the web-based performance appraisal system, and the author of the books, *Discipline Without Punishment* and *The Complete Guide to Performance Appraisal*. Both books were major book club selections and have been translated into Chinese and Arabic.

Paramount Pictures bought the movie rights to *Discipline Without Punishment* and produced the video series "Respect and Responsibility" with Dick as host. His latest book, *The Performance Appraisal Question and Answer Book*, was published in May, 2002. His new book on the controversial forced ranking procedure will be published by the Harvard Business School Press in April 2005.

For five years, Dick was a regular commentator on National Public Radio's "Morning Edition" program. His articles have appeared in the *Harvard Business Review* and *The Wall Street Journal*. His biography appears in *Who's Who in America*.

There's a Right Way, a Wrong Way, and a Very Wrong Way to Handle Frequently Asked Questions During Workplace Investigations (continued from page 1)

employees are subject to a collective bargaining agreement, they are entitled to union representation if an employee reasonably believes it might result in disciplinary action to them ("Weingarten Rights"). A refusal to honor such a request may void otherwise appropriate disciplinary action and subject an employer to an unfair labor practice violation. However, employers are not obligated to notify employees of this right. Although for the past four years the National Labor Relations Board (NLRB) held that all employees, unionized or not, had the same right to request a coworker be present during any investigatory interview resulting in potential disciplinary action to the employee being questioned (Epilepsy Foundation), the NLRB recently ruled that employees at non-union companies do not have Weingarten Rights (IBM Corporation, 341 NLRB No. 148 June 9, 2004). This is a reversal of a NLRB decision from four years ago, and it is the fourth time in 22 years that the NLRB has changed its policy regarding Weingarten Rights at non-union companies. Stay tuned.

4. What do you think of all this?

Very inappropriate response: "You're creepy."

Inappropriate response: "It sounds like John is making this into a bigger deal than it really is."

Appropriate response: "I appreciate and recognize that this process is difficult, but my role is to impartially gather facts. I can't comment on the investigation."

Discussion: Occasionally interviewees ask for the interviewer's opinion. Do not let witnesses know your feelings about the allegations. You may be providing confidential information in doing so. Also, if a witness perceives your feelings or opinions he or she may shut down and not feel fairly treated. There is the further risk that witnesses will assume you are sharing information

provided with other witnesses. Remember, becoming "friends" with a witness or showing displeasure will compromise your impartiality.

5. Can I object to questions?

Very inappropriate response: "There will be consequences if you don't answer every question."

Inappropriate response: "This isn't a courtroom, Matlock."

Appropriate response: "Because this is not a legal proceeding objections are not appropriate. However, if you have a concern about a question, please let me know."

Discussion: There are no formal rules of procedure for investigative interviews and interviews are usually voluntary. Therefore, witnesses are typically not obligated to answer questions. If a lawyer or union representative attending an interview declares "objection" to a question, politely explain that "objections" are not appropriate. You should, however, ask about the concern and note it. Often a discussion of the concern will result in the witness answering the question. If an attorney or someone else attending the interview instructs the witness not to answer, or otherwise attempts to direct the interview, explain that the employer has a legal obligation to investigate the allegations and instructions not to answer are interfering with the information-gathering process. Tell the other person attending you are sure he or she wants the matter resolved for the witness's sake as accurately and expeditiously as possible, and you need their cooperation in letting the witness speak freely. If the witness remains silent, note the exchange, continue with the interview, and use the information received.

6. Who will read my comments?

Very inappropriate response: "Your juiciest comments will appear in the next company newsletter."

Inappropriate response: "I guarantee your comments will remain confidential."

Appropriate response: "Only decision-makers on a need-to-know basis within the organization who will need to examine the information."

Discussion: Never guarantee confidentiality. Explain to witnesses you will do your best to maintain confidentiality, and you are asking everyone involved to maintain confidentiality. It is a good idea to mention at the beginning of interviews whether comments will be attributable to witnesses by name. If applicable, further explain that certain disclosure and confidentiality restrictions, such as the Minnesota Government Data Practices Act, may apply to the investigative report.

7. Can I see your report?

Very inappropriate response: "The report will be posted in the break room when it's done."

Inappropriate response: "Yeah, if you bring me a subpoena."

Appropriate response: "The report won't be made available to witnesses. The purpose of the investigation is to determine if any policies have been violated, and to address any such violations. In doing so, we have to maintain privacy for everybody."

Discussion: Explain to witnesses up front they may not be entitled to the report or other information arising from the investigation due to confidentiality and retaliation concerns. If disclosure is required, consider releasing the report with names and other identifiers redacted or "coded" in some manner (e.g. Person A). Notably, the Fair and Accurate Credit Transactions Act (FACTA), effective March 31, 2004, provides some relief to employers using third parties to conduct workplace investigations. Pursuant to FACTA, an employer using a third party is not obligated to follow the

(continued on page 14)

There's a Right Way, a Wrong Way, and a Very Wrong Way to Handle Frequently Asked Questions During Workplace Investigations (continued from page 13)

disclosure requirements of the Fair Credit Reporting Act if the investigation involves alleged violation of law, misconduct, or a violation of a pre-existing written policy. Therefore, an employer is no longer required to provide the alleged offender with a copy of the third party investigator's report or the names of witnesses and accusers.

8. Who else have you talked to?

Very inappropriate response: "Well, I talked to everyone in your work group. Then I went over to your old employer and asked everyone you used to work with what kind of person you are."

Inappropriate response: "That's none of your business."

Appropriate response: "It's very important that we keep this process confidential so I can't reveal the names of witnesses. Are there people you believe I should talk to?"

Discussion: By explaining that you cannot reveal witness names, a witness will be reassured that the interviewer will not reveal his or her name to other witnesses. Additionally, keeping witness names confidential will help eliminate possible retaliation against

employees participating in the investigation. At the end of every interview, interviewers should ask for suggestions on additional witnesses. When suggestions are provided, ask why they should be interviewed and what do they know.

9. Can I say something off the record?

Very inappropriate response: "I don't care – I just make up stuff for the report anyway."

Inappropriate response: "Sure, it will be our little secret."

Appropriate response: "There is no record in a legal sense. My job is to note all information I receive."

Discussion: You should explain during the introduction of the interview there is no "record" like in court or a deposition, and all information received during the course of the investigation may be noted. If a witness asks the question, an inquiry into the witness's apprehension about talking "on the record" is warranted. The witness probably has pertinent information but is likely concerned about retaliation and confidentiality. Talking through these concerns may sufficiently put the witness at ease to

provide the information. Also, keep in mind that witnesses occasionally "let their guard down" and continue talking after shaking hands and walking to the door at the conclusion of the interview. These comments are often very informative so remember to note them.

CONCLUSION

Unhesitant, consistent responses to questions asked during workplace investigations are critical to an effective investigation, which can insulate an employer from liability. If you are not certain how to respond, tell the witness you will promptly get back to him or her with a response. Take the time you need to determine the appropriate response, even if that requires you to reschedule interviews. The brief delay in the investigation will be outweighed by providing the correct answer. Finally, it bears repeating that if you have a policy or have come across the question previously, be consistent with your policy and appropriate past practice.

For more information please contact John Mack with Mack Law Workplace Resolutions at jmack@johnmacklaw.com.

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Inside This issue:

- ✓ There's a Right Way, a Wrong Way, and a Very Wrong Way to Handle Frequently Asked Questions During Workplace Investigations
- ✓ President's Column
- ✓ Building Search Committee Consensus
- ✓ Trends in Relocation
- ✓ HR Basics from SHRM
- ✓ Program Announcements
- ✓ New Members