

AUGUST 17, 2016

WHAT'S ONLINE

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If you haven't been to our website recently, here's exclusive online content you've been missing:



Employment Law Update for Managers

on the tricky legal issues supervisors face daily.



Compliance Checklists

to ensure you're in compliance with employment law.

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Accommodation? Attorneys' best ADA tips for employers

■ 6 can't-miss steps when worker claims disability

Mainly, the ADA requires two things of employers:

- Engage in a timely **interactive process** with those struggling to do their jobs due to a disability, and
- Seek out and provide any **reasonable accommodations** that help those individuals perform the essential functions of their jobs.

Result: There are a lot of gray areas in the interactive and accommodation processes that can trip employers up and lead to costly lawsuits.

Forget-me-nots

To help, employment law attorneys Pavneet Singh Uppal and Shayna H. Balch of the firm Fisher & Phillips LLP have shared the most critical steps they recommend employers take when navigating those ADA processes:

1. **Push back if employees don't have a medical diagnosis.** A lot of employees self-diagnose themselves as being

(Please see ADA ... on Page 2)

The main problem

Trouble is, the ADA and federal regulators have established very few black-and-white processes for how employers can go about fulfilling those requirements.

IRS issues proposed rule on ACA calculation

■ Opt-out payments to become a little less attractive for employers

Did you know you may have to add the cost of opt-out payments into your ACA "affordability" calculation?

A new proposed rule by the IRS seeks to clarify this important point.

Are your payments 'unconditional'?

Employers can provide a post-tax, opt-out payment to workers for waiving company-sponsored health coverage.

But, under the rule, if that payment is "unconditional" – i.e., the only requirement to get it is a waiver of

coverage – you must count it as a required employee contribution when calculating a plan's "affordability."

Why? It's considered pay employees must forgo to participate in the plan.

However, "conditional" payments (i.e., those made if an employee waives coverage and proves he/she has alternative coverage) may be left out of the "affordability" calculation.

The rule, once final, would apply to plan years on or after Jan. 1, 2017.

The rule: www.tinyurl.com/aca470

ADA ...

(continued from Page 1)

disabled, said Uppal and Balch. But to trigger employer ADA liability, an employee must be able to show:

- He or she is “disabled” under the ADA – which requires a doctor’s say-so, and
- He or she is “qualified” for ADA protections – meaning able to perform the essential functions of their job with or without a reasonable accommodation.

Bottom line: Accommodation requests must be linked to an actual, doctor-confirmed disability.

2. Spell out essential functions in job descriptions. You have a duty to spell out essential functions of employees’ jobs, said Uppal and Balch.

If you do, then during the interactive process the burden shifts to employees to prove they can perform them all.

Spelling out 5 to 10 duties should be sufficient, Uppal and Balch said.

3. Provide the physician with the job description. When a disability isn’t obvious, request medical documentation.

Uppal and Balch’s advice on this:

- Ask the employee to sign a release allowing your company to submit a list of questions to their doctor
- Give the physician the job description
- Ask which, if any, functions the employee can’t perform – and why
- Ask the physician to describe any reasonable accommodations that would allow the employee to perform those job functions, and
- Only request info pertaining to the employee’s disability and limitations.

4. Go with what the doctor says. If the doctor says the employee can do the job but the employee disagrees, Uppal and Balch said you can side with the doctor.

5. Document. Document. Document. Yes, you’ve heard this a million times. But what does it mean?

Uppal and Balch said to act as if someone will review/audit every step you took to comply with the ADA. This means you should always:

- Send affected employees a letter using the phrase “interactive process” explaining your willingness to engage in open dialogue to help them
- Have an employer representative present during any dialogue during the process to act as a witness and to take accurate notes, and
- Send a courteous letter to the employee recapping the process if an accommodation can’t be worked out.

6. Avoid discussing cost. Saying an accommodation is unreasonable because it costs too much is usually a losing argument, said Uppal and Balch. Focus instead on the impact to co-workers – i.e., do they have to work significantly harder or longer due to an employee’s accommodation?

Info: “*The Employee Accommodation Conundrum*,” a presentation by Paveet Singh Uppal and Shayna H. Balch at the SHRM 2016 Annual Conference and Expo.

Sharpen your JUDGMENT

This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.

■ Did HR play its cards right with suspected FMLA abuser?

“You wanted to see me?” asked employee Donald Shell, standing in HR manager Lynn Rondo’s doorway.

“Take a seat,” Lynn said. “I’ll get right to the point ... we’re suspending you until we finish an investigation into your Facebook photos.”

“What are you talking about?” Donald asked.

Facebook post is suspicious

“We had no objection to you taking 12 weeks of FMLA to recover from shoulder surgery,” Lynn said.

“But when that ran out, you said you weren’t ready to return to work. So we granted you another month of leave – beyond the FMLA.

“Then we see this ...,” Lynn said, pointing to her computer, “... photos of you swimming at the beach.”

“You think I lied about still being injured?” Donald asked.

“I’m not saying that,” Lynn said. “But posting photos on Facebook where your co-workers – who covered your duties – can see them is bad for morale. And it violates our social media policy to post things that can hurt others’ performance.

“Can you explain this?”

“All I can say is it sounds to me like you’re upset I took leave and are looking for an excuse to fire me,” Donald said.

Donald was eventually fired for violating the social media policy. He then filed an FMLA retaliation lawsuit against the company. The company fought it. Did it win?

- **Make your decision, then please turn to Page 6 for the court’s ruling.**

WHAT'S WORKING in Human Resources

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3 more rules the NLRB wants you to cut from your employee handbooks

■ More common communication policies deemed illegal by board

The National Labor Relations Board (NLRB) has struck again in the name of protecting employees' speech rights.

After receiving a charge that the employee handbook for Casino Pauma, an Indian casino in Pauma Valley, CA, contained overly broad rules, the NLRB struck down several of the casino's policies as illegal.

Not unionized? It doesn't matter

Now here's the rub: The NLRB's rulings are binding for non-unionized employers as well as union shops, so everyone's got to pay attention to the kinds of policies it axed here.

The policies it shot down were:

1. **A rule banning staff from conducting personal business at the casino.** An NLRB judge said it "unlawfully

restricts off-duty employees from engaging in protected activity [i.e., talking about working conditions]."

2. **A rule against solicitation and distribution.** It banned all solicitation and distributions if intended recipients expressed any unreceptiveness. The judge said it was unlawful because it prohibited protected solicitation and distribution – i.e., talking about or distributing union materials.

3. **A rule requiring employees to use a company disclaimer if they posted content online about work.** The judge said it illegally hindered protected activity/speech.

Casino Pauma was ordered to rescind the policies and rewrite its handbook.

Cite: Casino Pauma and Unite Here International Union, *NLRB Div. of Judges, No. 21-CA-161832, 7/18/16.*

Surprise safety training goes horribly awry for employer: Now it's going to trial

■ Employee claims she thought she was going to die

A recent lawsuit in Oregon shows how dangerous and harmful springing disaster and workplace violence training on employees can be.

In the wake of horrific shootings at schools and businesses, administrators at Pine Eagle Elementary School in Halfway, OR, decided to surprise teachers with an active shooter drill.

Without warning, a school board member and safety officer entered the school with masks and starter pistols during an in-service day for teachers.

'You're dead'

The school board member found teacher Linda McLean alone in her classroom, fired the gun at her and said,

"You're dead" before running away. The gun fired smoke, but no bullet.

McLean claims she thought she was going to die. Other teachers were alarmed as well. Two collided while running for the same exit. One was injured. Another teacher wet herself.

McLean sued, claiming she suffered from severe emotional distress and post-traumatic stress disorder.

The school district fought to get her case dismissed. But a court said the case should be heard by a jury, which could find the district and administrators liable for intentional infliction of emotional distress.

Cite: McLean v. Pine Eagle School District, No. 61, *U.S. Dist. Crt., D. OR, No. 3:15-cv-654-sj, 7/1/16.*

■ Employer out \$19.5M for gender bias complaint

Just the perception an employer isn't being fair to a class of workers can lead it into troubled – and expensive – legal waters.

Just ask Qualcomm. The tech giant has agreed to pay \$19.5M to settle a gender discrimination complaint filed on behalf of 3,300 women in STEM (science, technology, engineering and mathematics) positions to stop the lawsuit from being filed in federal court.

In other words, Qualcomm didn't even go to court and it's out millions.

The reasons the women said Qualcomm was discriminatory, according to their complaint:

- Women held less than 15% of its senior leadership positions
- Women in STEM positions earn less than male counterparts, and
- Employees who worked late were rewarded over those who arrived early and left at the end of the normal work day, which disproportionately affected mothers.

Info: www.tinyurl.com/qual470

■ Noose, 'N-word' lead to \$3.6M race discrimination settlement

Here's a horrific and extreme example of how an employer can be left holding the bag for some of its managers' thoughtless actions.

A race discrimination lawsuit brought against New Jersey Transit by seven Africa-American workers alleged a former supervisor used the "N-word" and put a makeshift noose around one worker's neck while saying, "This is how things were handled in the South."

The workers also accused managers at the state transportation authority of treating and paying them less than their white co-workers.

Result: New Jersey Transit has agreed to pay the men a total of \$3.65M to settle the lawsuit.

Info: www.tinyurl.com/transit470

Experts give their solutions to difficult workplace problems

HR professionals like you face new questions every day on how to deal with workplace conflict and employment law. In this section, experts answer those real-life questions.

Are paycards legal, and can we make workers use them?

Q: Are paycards legal? If so, can we require employees to accept wages by paycards, and are there any requirements we must abide by?

A: Generally yes, paying wages by paycard is legal – but employers cannot require an employee to receive wages by paycard, says employment law attorney Jennifer Saltz Bullock (jbullock@stearnsweaver.com) of the firm Stearns Weaver Miller.

In addition, if an employee chooses to receive wages by paycard you must provide:

- a clear, written disclosure of fees (assessing fees for use can be problematic to begin with)
- access to account history, and
- other protections associated with possible unauthorized use of the card.

Also, check your state's laws regarding paycards, and tread carefully if you have employees in multiple states. Most states have slightly different regulations employers must comply with when using paycards.

The best way for managers to give constructive criticism

Q: We're always looking for tips on how our managers can approach staff with constructive criticism. Got any we can pass along?

A: Always deliver feedback with the goal to reinforce or improve performance, says Dominique Jones, chief people officer at Halogen Software. So tell

your managers to:

- **Make sure it's actually constructive.** The intent should be to help the worker develop. Otherwise, the feedback comes across as criticism.
- **Not wait.** Provide feedback as quickly as possible after the undesired event. Otherwise, the person may not be clear on what needs to be improved.
- **Base feedback on observed behavior** – not opinion or assumptions. Then address the impact the behavior has on the business and/or team.
- **Make it actionable.** Work with the employee to determine remedies to make.

How does new overtime rule affect state's rules?

Q: Where does the DOL's new overtime rule leave us with our state's overtime laws? When do we follow our state's regs and when do we follow the DOL's?

A: Always follow the higher/more stringent standard, says a recent overtime FAQ released by the DOL (www.tinyurl.com/otr470).

The FLSA provides minimum wage and hour standards, but it doesn't prevent a state from establishing more protective standards, says the DOL.

So if a state establishes a more protective standard, that higher standard applies in that state.

If you have an HR-related question, email it to Christian Schappel at: cschappel@pbp.com

■ Tell your hiring managers: 'Don't ask these questions'

Chances are your hiring team knows the basic questions not to ask job candidates – i.e., "How old are you?" "Are you pregnant?"

So we're going to skip over those. What we have instead are some not-so-obvious questions that could land your company in just as much hot water.

Employment law attorney Cortney Shegerian of the firm Shegerian & Associates says she hears companies asking the following illegal questions.

Avoid these topics

Pass these inquiries along to your hiring team as examples of what to avoid in interviews:

1. Will you need personal time off?
2. Are you disabled?
3. Do you have any health concerns?
4. Is anyone in your family disabled?
5. How many years do you plan on working?
6. Are you a religious person?
7. What do you believe?
8. Are you ____ (*insert race, religion, sexual orientation*)?
9. Do you have a husband/wife or boyfriend/girlfriend? (*Don't ask, even as part of idle chitchat. It can be viewed as trying to figure out a person's sexual orientation.*)

Why are all of these taboo? Because they provide the kind of info that employers can't use to make hiring or firing decisions.

And even if you didn't use such info to make a decision, simply inviting the perception that you did can spark a discrimination lawsuit – the kind that can be very difficult to come out on top of.

(A tip of the hat to "Evil HR Lady" Suzanne Lucas of Inc.com for bringing these to our attention.)

Cite: www.tinyurl.com/linc471

WHAT WORKED FOR OTHER COMPANIES

Our subscribers come from a broad range of companies, both large and small. In this regular feature, three of them share a success story illustrating ideas you can adapt to your unique situation.

1 Recognition raised engagement, loyalty

We did a good job of recognizing and rewarding employees for going above and beyond the call of duty ... *that is, when we knew about it.*

But we missed a lot. Because, naturally, managers couldn't be around to see and praise everything our workers did, some golden opportunities to reward and motivate staff were missed.

Well, we didn't want those good deeds and special accomplishments to slip through the cracks any longer.

That's why we adopted a program for managers and employees to easily call out their colleagues who perform outstanding work and/or provide them with extra help.

If you see something, speak up

If anyone saw a colleague do something that exemplified our core beliefs – Safety, Caring, Integrity, Fun and Passion – they could recognize it on a special section of our intranet.

Those recognized would then be given a small reward, and they'd

accumulate points that could be redeemed for bigger prizes.

We partnered with a vendor to make the technical side of it all work.

It has been a big success.

According to our research, employees who were recognized were two times more engaged and three times more likely to stay loyal to the organization.

(JetBlue executives and Eric Mosley, CEO, Globoforce, as presented at the Globoforce WorkHuman 2016 conference in Orlando)

**REAL
PROBLEMS,
REAL
SOLUTIONS**

2 Affordable initiatives had big health impact

Our annual well-being assessment painted a pretty bleak picture of how unhealthy our employees really were.

And it wasn't just them. I wasn't as healthy as I could've been either.

The other problem: We didn't exactly have an unlimited budget to implement wellness initiatives.

So I challenged myself to find some cost-effective wellness ideas employees would be on board with.

Using a wellness survey, our

company identified what health topics employees were most interested in.

That led us to bring experts in to discuss things like how to read nutrition labels, lower cholesterol, manage diabetes and stop smoking.

Small choices, huge benefits

Next, we focused on getting workers to do small, manageable things – like using the stairs instead of taking the elevator and controlling meal portions.

We also installed filtered water

stations throughout our property, which made it easier for employees to stay hydrated and helped them avoid the soda machine.

Eventually, we began to see people make bigger lifestyle choices – like volunteering to tackle a 90-day fitness and weight-loss program.

As a result, we've noticed a big change in employees' health. Many have shed pounds, and their confidence and energy have improved.

(Deborah Crippen, HR director, Lawai Beach Resort, Koloa, HI)

3 Using simpler language improved onboarding

A lot of new hires were feeling frustrated with our training materials.

We're working in a technical industry, and a lot of manuals were rife with jargon.

An introductory letter to new hires had eight acronyms in the first paragraph alone. It was intimidating.

But not only was it frustrating to new hires, veterans were starting to complain too.

The hires were scrambling to

decipher what they needed to know, and they were asking veteran employees for help, which took time away from those employees' work.

It was a situation we had to fix.

Asked employees for input

Our solution: We held a meeting and invited every department.

In the meeting, we got feedback from both new hires and veteran employees.

For example, vets shared what helped them get adjusted when they

started, as well as what bumps they experienced along the way.

With everyone's input, we were able to rewrite the training materials with more straightforward terms that employees used every day.

We didn't change *what* we were saying, only *how* we were saying it.

New hires don't need a dictionary to look up jargon anymore.

Now people are less frustrated with the onboarding process and more work is able to get done.

(Anelia Varela, director, The Writer, New York)

OT rule legislation unlikely to alter December deadline

If you're not a fan of the DOL's new overtime rule, you'll be happy to know there are efforts afoot to slow its implementation.

Example: Three House Democrats have introduced a bill to slowly phase in the new \$47,476 salary threshold over the next three years, as well as eliminate automatic increases.

The problem is, even if it's passed (and that's a long shot), it's probably too little too late to affect the new rule's Dec. 1 deadline.

Legal experts agree: Come hell or high water, on Dec. 1 the OT rule will take effect as is. So keep prepping.

Info: www.tinyurl.com/OTdelay471

IRS releases updated forms for ACA reporting

The IRS has released drafts of its 2016 ACA reporting forms employers and insurers must use to report their offers of health coverage to the feds.

While the IRS states the 2016 forms are just drafts and therefore subject to change, they provide a good preview of what 2016 reporting will entail.

What's changed?

- 1094-C. The IRS removed a form of

transition relief on line 22 that was only available for 2015 reporting (www.tinyurl.com/1094-C471).

- 1095-C. The form layout remains unchanged. But two new codes were added for reporting conditional offers of coverage to spouses (www.tinyurl.com/1095-C471).

Also, the "good faith" effort that covered many employers from payroll and vendor mistakes won't be available for 2016 reporting.

One change can boost productivity about 9%

Whether it's for you or your employees, it might be a good idea to talk to IT about this upgrade:

Switching to a bigger computer screen or adding a monitor boosted desk-bound employees' productivity almost 9%, a Microsoft study found.

That's good for about 45 minutes of extra work every day.

Info: www.tinyurl.com/upgrade471

Lighter side: Owners settle disputes with martial arts

Frank and Lorenzo Fertitta just sold the Ultimate Fighting Championship (UFC) to the tune of \$4 billion.

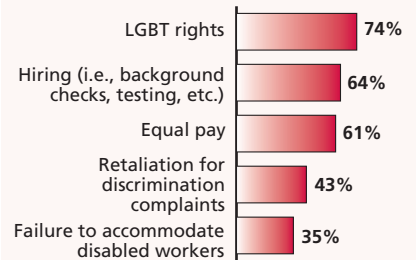
And since then an interesting factoid about their business

WHAT COMPANIES TOLD US

Claims rising?

In which areas do you see discrimination claims rising over the next year due to increased EEOC enforcement?

(Select all that apply)



Source: "Executive Employer Survey Report, July 2016," by Littler Mendelson.

Recent enforcement actions by the EEOC have shown that rooting out discrimination based on sexual orientation, as well as pay inequality, are two of the agency's top priorities at the moment.

Each issue of WWHR contains an exclusive survey to give executives insight into what their peers nationwide are thinking and doing.

partnership has been unearthed.

Since each brother had a 50% share of the organization, they stipulated that any disputes between the two of them had to be settled by a scored jiu-jitsu bout.

Fortunately for the partners, they always saw eye to eye and never needed to invoke the clause. If only we could all be so lucky with our siblings.

Info: www.tinyurl.com/UFC471

Sharpen your judgment... THE DECISION

(See case on Page 2)

Yes. The company won when a judge threw out Donald's FMLA retaliation lawsuit.

After looking at everything the company did in this case, the court ruled retaliation wasn't at play.

For starters, the company granted Donald some leeway – first by extending his leave beyond the FMLA's 12-week allotment to help him recover and, second, by giving him a chance to explain his side of the story (but he declined to speak on the matter).

It also wisely took the time to investigate the incident, which showed there was no rush to judgment.

And finally, the company didn't mention "FMLA" or "leave" in its reasoning for firing him. Instead, it pointed to his violation of its social media policy.

As a result, the court's conclusion was: Donald's actions while on leave were the reason he was fired. His taking of leave was not the issue. Case dismissed.

■ Analysis: Keep calm, and investigate

Even if you think you've got rock-solid evidence of FMLA abuse, courts don't want to see employers act hastily with discipline – it raises suspicions of retaliation. Any time you can show that you made an extra effort to gather all the facts – and, especially, the employee's side of the story – it shines a more favorable light on you in court.

Cite: Jones v. Gulf Coast Health Care of Delaware LLC, U.S. Dist. Ct. M.D. FL, Tampa Div., No. 8:15-cv-702-T-24EAJ, 2/18/16. Fictionalized for dramatic effect.

Improved employee retention with these tweaks to benefits education

■ Getting personal helped us prevent talent from jumping ship

Our company offers an outstanding benefits package that we want employees to take full advantage of.

After all, when employees are happy with their benefits (and total compensation in general), retention is almost always high.

The challenge was keeping our benefits info top of mind with employees and making sure they knew everything that was available to them.

So our goal was to do just that.

4 times per year

One way we make sure our benefits education is top of mind with all of our employees is through year-round education.

More specifically, we hold company-wide meetings each quarter to let everybody know how the company's doing, what we have planned and where we can improve.

And because we have all our employees' attention during these meetings, we use the gatherings to remind staffers about all of the benefits we offer – from our health and 401(k) plans to disability and life insurance benefits.

These reminders are geared toward our newer and younger employees.

Personal reminders that work

The quarterly meetings work well, but we don't stop there.

When I come across new employees who aren't enrolled in our benefits plans, I seek them out and issue personal reminders to make sure they didn't simply forget to enroll.

This is especially important for our 401(k) plan, a benefit that has a three-month waiting period, which

makes it easy for the plan to slip to the back of new employees' minds.

With the help of our 401(k) provider, we track our new employees. And when they become eligible to enroll in our retirement plan – but fail to do so – we reach out to them to find out why.

Taking it a step further

When employees have questions, our provider will sit down with them (usually in group settings, but sometimes individually) to go over the benefits of our plan.

Example: Our provider will offer specific examples of how much more money employees get by taking full advantage of our company match, which is more generous than the industry average.

But the vendor education isn't limited to our 401(k) plan. We've had providers in to talk to employees about all of our benefits.

But saving for retirement is where our employees seem to need that extra push. And the strategy has worked.

Thanks to our education efforts, we've managed to get our 401(k) participation rate up past 70%.

The big payoff

Not only has participation in our benefits programs increased, employee retention has as well – and that is critical in our line of work.

Going above and beyond to make sure employees know what we offer has paid big dividends by keeping our home-grown talent in house.

(Carmen Zamarron, controller, for an IT company in El Paso, TX)

■ 6 red flags your independent contractors may be employees

You've likely heard that the DOL and IRS have made seeking out the misclassification of independent contractors (ICs) a top priority.

But did you know those agencies use different tests for determining who's an IC?

Granted, they're similar, they also have their subtle differences – and you must make sure ICs pass both:

- **DOL:** www.tinyurl.com/TestDOL
- **IRS:** www.tinyurl.com/TestIRS

Signs of trouble

To help employers find and fix classification problems, Jason Sheffield, a benefits attorney with Willis Human Capital Practice, recently shared these red flags that will raise the feds' eyebrows:

- **ICs are paid the same way as employees** – i.e., their checks look the same or always arrive on the same day as employees'. It sends a signal they're one and the same as your employees.
- **They go through the same progressive discipline process as employees.** Sheffield said to avoid putting ICs through progressive discipline. Period.
- **ICs have company expense accounts.** Generally, these are reserved for employees.
- **They use company equipment.** For the most part, ICs should use their own equipment.
- **Company supervisors control the work of your ICs.** The more control your supervisors/managers have over the work and schedules of ICs, the more likely it is the feds will see those ICs as employees.
- **They've signed a non-compete.** Sheffield said non-disclosures are OK. But non-competes are for employer/employee relationships.

Cite: "The Not So Independent Contractor," a presentation by Jason Sheffield at the SHRM 2016 Annual Conference and Expo.

WHAT WOULD YOU DO?

Companies face competing agendas when dealing with their employees. They must find ways to inspire their people to excel, while controlling costs and staying within the law. Here we present a challenging scenario and ask three executives to explain how they'd handle it.

Competitor is trying to poach top manager: How should HR respond?

The Scenario

HR manager Stu Capper was settling into his chicken salad sandwich for lunch when a knock at the door interrupted him.

"Hey, Stu," said manager Janet Ritter as she stepped into Stu's office. "Bad time?"

"No, not at all," Stu said, putting down his sandwich. "Have a seat."

"Thanks. I needed to talk to you about something right away," Janet said. "I just got a call from one of our biggest competitors with an offer to work for them."

'Their offer was pretty nice'

"What?" Stu asked. "I didn't even know you were looking for a new job."

"I wasn't," Janet replied. "This just kind of came out of nowhere."

"I don't understand," Stu began. Then, it

clicked. "Oh, I see. One of our competitors is trying to poach you."

Janet nodded. "It looks like it. I met a few of their people at the last trade convention I was at. We hit it off. Maybe that's what sparked all of this," Janet said.

"So, what are you going to do? To be honest, you're one of the best managers we have," Stu said. "It would hurt to lose you."

"And I like it here. It's just their offer was more than I get here," Janet said. "I wanted to run the situation by you to get your reaction and thoughts."

"Obviously, I want you here," Stu began. "But I can't stop you if you want to go."

"Can you match the offer?" Janet asked. "I'd like to stay. But I've also got to do what's best for me and my family."

If you were Stu, what would you do next?

Reader Responses

1 John Sullivan, HR manager, UST Inc., Nashville

What John would do: I'd do some homework to find out more about this company and what it's offering.

And before I spoke to Janet again, I'd also check in with upper management to see what else we could bring to the table.

Then, I'd call Janet in to see what she needs and wants from us.

I'd start by offering her some perks that weren't pay-related to see if that would help.

We're big on flexible scheduling, and maybe the other company isn't. I'd see what would work best for her in this case.

Reason: I want to be armed with the knowledge of what our competition is doing as well as what our top employees covet.

Replacing someone at that level takes a lot of resources, so if we have to give a little to keep Janet on, it'll save us in the long run.

2 LaScola Beverly, HR manager, Hilco Trading LLC, Chicago

What LaScola would do: First I'd go over Janet's performance and see if anything stood out.

Then I'd bring her in for a talk to see what she wants and try to convince her to stay with us. I'd treat this like an interview, almost, using her past performance to potentially justify a raise.

Reason: If our competition sees something in Janet, we need to recognize it as well.

3 Angelique Lerma, HR partner, Esri, Redlands, CA

What Angelique would do: I'd check to see if we had Janet sign a non-compete. If so, I'd enforce it here with a gentle reminder.

If not, I'd take this as an indication that we need to do more to retain top talent.

Reason: We need to make sure we put our best retention strategies to work. And if it's too late to save Janet, we need to at least do our best to make sure nobody else jumps ship.

QUOTES

The mere fact of being able to call your job your passion is success in my eyes.

Alicia Vikander

On my own I will just create, and if it works, it works, and if it doesn't, I'll create something else. I don't have any limitations on what I think I could do or be.

Oprah Winfrey

Treat people as if they were what they ought to be, and you help them become what they are capable of being.

Johann Wolfgang von Goethe

Striving for success without hard work is like trying to harvest where you haven't planted.

David Bly

If you're not reaching back to help anyone then you're not building a legacy.

Germany Kent

The superior man is modest in his speech but exceeds in his actions.

Confucius