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## HUMAN RESOURCES: THE HIRING PRACTICES OF SUCCESSFUL COMPANIES

By Jane Plank

One of the most important decisions a business can make is its choice of employees. Hiring well decreases employment risks due to terminations, discipline, etc. Hiring well also increases retention and reduces turnover because the candidates and other employees are generally better satisfied. Finally, the right employees can definitely improve things like customer satisfaction, productivity, etc. Of all the changes a company can make in order to improve morale, decrease human resource costs and limit personnel liability, none is more effective than focusing on hiring the right person for the job.

Hiring the wrong person not only causes morale problems, decreases productivity and wastes time — it also costs a lot of money. The average cost per hire in the United States ranges from \$2,546 to \$6,943. Contained in these costs are productivity and vacancy rate costs; lost time for employees who search for, screen and interview the candidates; costs of advertising for employees; material costs; and downtime for at least two employees (the trainer and the new hire) during the orientation and training period.

Employee referral programs are the most successful method of attracting high-quality candidates in a consistent fashion. These programs require attention and investment in order to be successful. A written job description, good interview questions and a realistic job preview are prerequisites for a successful program.

During the screening period, prior to interview, a telephone screen can save time. This interview can verify basic credentials, skills and applicant interest. The applicant can also

provide application materials and a resume so that screening can be done prior to the interview. This would include a background check, verification of credentials and reference checking. If there are two or more red flags in this process, it is wise to move on to the next candidate. All applicants should be able to provide at least two people who can give a supervisory employment reference. This is crucial because the best predictor of future success is past success.

It is important to use behavioral interview questions that force the applicant to draw on real life situations and actual experience. For instance, when interviewing a potential Administrative Assistant who needs to be proficient in Microsoft Office, ask a question about each software product that requires the candidate to respond with actual situations from prior work.

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This publication is intended to inform clients and friends about labor and employment matters of current interest. The matters included were not given exhaustive treatments due to space limitations. This abridged information should not be construed as legal advice and is not a substitute for legal counsel. This publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship.

### ***The Hiring Practices of Successful Companies continued from page 1***

Realistic job previews improve the assessment of job fit. In a realistic job preview, one gives the employee an opportunity to perform the duties from the position description while the employer watches. In some cases it may be a simple five minute process, while in other cases, employers may pay applicants to work

for a day. This gives both the employee and the employer an opportunity to assess true fit for the job.

The bottom line is, employers should spend time on the hiring process. Don't give in to the temptations to hire warm bodies because of business or family pressures if you know they would make a poor fit. Remember, a little time and investment early on is crucial for

continuing success in the future.

*This guest article was written by Jane Plank, the Director of Hudson-based HR Department Unlimited. With her years of experience in human resources, Jane can help you avoid legal pitfalls in the future, while helping your company make the most of its employees and staff. Jane can be reached at 330-414-2220.*

## **WORKERS' COMPENSATION: SUPREME COURT RULES ON UNAUTHORIZED PRACTICE OF LAW**

By Brian K. Brittain

In the much anticipated Ohio Supreme Court decision on the unauthorized practice of law, the Court offered a mixed bag of a verdict: non-lawyers who assist and represent parties in state workers' compensation claim proceedings are not considered to be engaged in the unauthorized practice of law, but only if they conform their activities to guidelines adopted by the Ohio Industrial Commission earlier this year.

The case, Cleveland Bar Association v. CompManagement, Inc., grew out of a recommendation earlier this year by the Board of Commissioners on the Unauthorized Practice of Law (we reported on this issue extensively in the Second Quarter 2004 issue). The Cleveland Bar Association had noticed that representatives of actuarial services and third party administration firms (TPAs) were routinely engaging in legal argument before hearing officers of the

Industrial Commission or the Bureau of Workers' Compensation. Such practice, argued the Bar Association, constituted the unauthorized practice of law and should be prohibited. The Board agreed with the Bar Association, and issued its recommendation in May. As the Board has no enforcement powers of its own, however, the matter went before the Ohio Supreme Court to decide whether to adopt the Board's recommendation.

Ultimately, the Court refused to adopt the Board's recommendation. Pointing to such factors as longstanding tradition and "public interest factors," the Court declined to exercise its authority to outright prohibit the use of non-lawyers in compensation proceedings. Thus, TPAs will continue to operate and process workers' compensation claims.

However, the Court codified into law several critical guidelines of the Industrial Commission of which all employers in the state should be aware. According to the Court,

non-lawyer representatives are not permitted to: examine or cross-examine claimants or witnesses; cite to or interpret administrative rulings or court decisions; file briefs, memoranda, or requests for reconsideration; provide legal advice to employers; or comment upon opinions with respect to evidence and credibility of witnesses. TPA representatives had routinely engaged in the foregoing practices in the past, as no formal court order forbid them from so doing. With this decision, however, the door on such activities has effectively been slammed shut.

As we noted before, RB&S clients are fortunate to be in a situation where the decision of the Ohio Supreme Court will have no impact on them.

*Brian and the workers' compensation team are always looking for ways to save on your bottom line. Call them at any time for more information*

## **LABOR: NEW RULE PROPOSED FOR FEDERAL EMPLOYEE UNIONS**

By David "Scoop" Farkas

As our loyal readers know, we at the labor news bureau of RB&S keep an ever-vigilant eye out for new decisions that might affect how our clients conduct business. In the closing quarter of 2004, this task did not prove to be difficult, as the output of the Labor Board was frankly disappointing. Major legal issues were left unresolved, and the Board failed to address some of the more novel issues of labor law that have developed. In an effort to remove the bottleneck, this intrepid reporter traveled to Washington, D.C.

for a face-to-face confrontation with two of the five Board members, plus the Board's General Counsel. (All right, I was an attendee at an attorney's conference. But the aforementioned were there, and I did get to speak personally with at least some of them.) Alas, the Board output continues to be slow.

In that light, it is refreshing to see that the Department of Labor has stepped into the breach created by the Board's lack of performance. In a recent notice published in the Federal Register, the DOL published a proposed rule that would require federal employ-

ee unions to inform new members of their rights to inspect collective bargaining agreements, participate in officer elections and other union activities, and exercise free speech rights without fear of retaliation. In addition, the rule would require unions to inform existing members of their rights in writing once every three years. According to the DOL, the proposed rule would make it more likely that members would monitor their unions and take action to remedy breaches in the integrity of the union.

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## EMPLOYMENT LAW BREAKFAST BRIEFINGS

***Presented by Lynn Schonberg & David Andrews, in conjunction with Jane Plank of HR Department Unlimited***

**Location:** 6000 Freedom Square Drive, Independence  
In the Ground Floor Amphitheatre

**Time:** 8:30 a.m. to 10:30 a.m.

**Registration:** Please contact Melody at (216) 447-1551 for information, or register online at [www.rbslaw.com](http://www.rbslaw.com)  
(No cost to RB&S clients and HRDU Members)

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### ***March 17, 2005 – Strategies in Severing the Employment Relationship***

As hard as you may try, there are times when an employee just does not work out. Ensuring the employee has an adequate opportunity to address performance problems, determining when to end the employment relationship, communicating that decision to the employee and managing workforce reaction are critical to your company's productivity. This session will prepare you for these most difficult workplace decisions.

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### ***June 16, 2005 – Privacy in the Workplace***

"You have no right to listen to my voicemail messages!" – or do you? One of the most misunderstood areas of employment law, by both employers and employees, is workplace privacy. Many of the laws have not kept up with new technologies, from internet tracking to GPS systems and high-tech surveillance. This session will help you sort through the various laws and technologies to strike the balance of protecting your company without violating your employees' privacy rights.

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### ***September 22, 2005 – Working with the Disabled Employee***

"I need the company to buy an expensive machine to help me do my job." "I need to work from home three days a week so that I can deal with my disability." These dreaded requests leave many companies wondering how far they must go to comply with an employee's accommodation request. This session will cover the entire accommodation process, including which employees must be accommodated, to what extent a request for an accommodation must be granted and the employers' rights in the accommodation process.

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### ***December 1, 2005 – HR Legal Update – What's Next for Employers?***

The only certainty in the laws governing employees is that there will be change. This annual year-end review will bring you up to date on all the employment law related developments of 2005.

## RB&S ATTORNEY SPEAKING ENGAGEMENTS

***Lynn Schonberg has been engaged for the following seminars and/or conferences in Cleveland:***

**Non-Profit Law for Business Attorneys** on February 17 sponsored by the Ohio Legal Aid Foundation and the Cleveland Bar Association.

**Averting Disaster: Employee Documentation, Discipline and Termination** on March 10 sponsored by National Business Institute.

Please contact Lynn Schonberg at (216) 447-1551 for more information.

## ABC, NORTHERN OHIO CHAPTER SEMINARS

ABC conducts an ongoing series of safety training for employers, including the popular OSHA 10-Hour and OSHA 30-Hour classes. All training participants must register one week in advance with Jennifer at (440) 717-0389.

**Location:** All training will be held at the NOC-ABC Training Center, 9255 Market Place West, Broadview Heights, Ohio 44147.

ABC also offers apprenticeship and training for a variety of crafts. Cleveland-area courses offered for 2005 include the following:

- 32-Hour Medical Gas Installer Certification – NITC ASE-6010  
January 24th-28th, 8:00 a.m. to 5:00 p.m.
- Installing FlowGuard® & BlazeMaster®, an OCILB approved course for plumbing contractors  
January 27, 9:00 a.m. to 3:30 p.m.
- Federal Government Seminar, covering topics such as Child Labor in Construction, Minimum Wage, and Overtime  
February 22, 8:00 a.m. to 4:00 p.m. This event is FREE for those who register by February 10.

Many of these programs and more are offered at a special discounted rate for ABC members.  
Please call Jennifer for more information.

### **SAFETY COURSES ARE NOW AVAILABLE ONLINE THROUGH ABC!!!**

Employees can take the course from any computer – at work, home, or the library.  
This can result in significant savings to companies, in both time and travel costs!

***New Rule Proposed For Federal Employee Unions continued from page 2***

The rule, proposed by the DOL's Employment Standards Administration, would cover federal employee unions subject to the standards of conduct provisions of the Civil Service Reform Act of 1978. Thus, while the bill would not have any direct impact on unions not concerned with federal employees, it would still be a strong affirmation to employees everywhere of their rights to both join and refrain from joining unions.

Interestingly, the new rule would also establish a new enforcement authority which would allow the DOL to investigate and prosecute

violations of the rule on its own initiative, rather than waiting for complaints from union members. The Department feels it should not have to wait for member complaints to begin enforcement action, since it is unreasonable to expect the union members who have not been informed of their rights in the first place to exercise those rights to bring matters to the Department's attention.

Sounds logical to us.

*Questions or concerns about labor? Alan Ross and David Farkas are prepared to take your call.*

## self-insured [corner]

The Workers' Compensation Resource Network is an association for self-insured employers in Ohio. The purpose of the association is to provide a unique forum, opportunity and resource for the educational benefit of self-insured employers.

The Resource Network dialogues ideas, resources and information with member peers by identifying and addressing issues which self-insured employers face. This includes engaging in dialogue focused on outcomes that enhance self-insured administration. Some topics thus far covered include the development and maintenance of a transitional work program, ergonomics, the importance of written job descriptions, the economic impact of business failures on self-insured employers, and medically managing claims for self-insured employers.

If you are a self-insured company, consider becoming a member of the Workers' Compensation Resource Network. Members pay no additional cost for two representatives from your company to attend regularly scheduled seminars and meetings.

Call Megan Geist at (216) 447-1551 x165 for additional information and membership details.

## FIRM NEWS

Everyone wants to give back to the community, but it's not always so easy to put theory into practice. That's why we're proud to highlight a recent fundraiser RB&S organized for Providence House in October. Providence House is Ohio's first and only licensed residential crisis nursery for infants and toddlers. The fundraiser collected food, clothing and money donations from employees of three office buildings near the firm's location.

Outside and staff donations totaled almost exactly \$1,000. In keeping with its prior commitment, RB&S matched that amount with another check of \$1,000 to Providence House. The fundraiser itself was a great success, as in addition to the generous monetary donations, a packed van-load of items was delivered as well. Items included winter jackets, hats, gloves, clothing and food products needed for daily operation. Congratulations to all for a job well done!

Alan Ross, head of the RB&S labor group, and Brian Brittain, head of the workers' compensation group, were recently honored with news of their selection as two of Ohio's "Super Lawyers" for 2005. The selection was made by a magazine called, appropriately enough, *Ohio Super Lawyers*. The magazine mailed out more than 33,000 ballots to attorneys across the state, asking them to name attor-

neys that they thought were deserving of this distinction in a wide variety of practice categories. Caution was used to ensure that same-firm votes were eliminated, as were "you vote for me, I'll vote for you" arrangements.

As we have had occasion to remark upon in the past, accolades are always nice, but they are particularly gratifying when they are made by peers who work and interact with you on a constant basis, and frequently on the opposing side of the table.

Congratulations to Alan (who received the distinction for the second year in a row) and Brian on this notable achievement!

David Andrews, a partner in the firm's employment law group, became Chairman of the Board of Directors of the Solon, Ohio Chamber of Commerce on January 1. The Solon Chamber is one of the preeminent Chambers of Commerce in Northeast Ohio with more than 500 business members. The Chamber serves as an advocate for the Solon business community and a forum for business opportunities and relationships to grow. The Solon Chamber also provides superior benefits, including group workers' compensation, through its membership in the Northern Ohio Area Chambers of Commerce. We wish David the best in his continuing work on behalf of the business community.

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*Firm News continued from page 5*

The Twinsburg City School District Board of Education announces the appointment of David Andrews to the position of board member through the remainder of the term ending late 2005. The Board of Education met in late December, and the appointment was unanimous.

“We’re very pleased to have such a high caliber individual willing and able to fill this position,” stated William Buzulence, President of the Board. “Mr. Andrews was the next person the voters indicated they wanted when he ran for the board in November (2003).” Mr. Andrews received 2,301 votes and over 25% of the votes cast, surpassed only by current board members Joseph Nunney and Kate Cain-Criswell who were elected to fill the two vacancies on the board.

Congratulations to David on this prestigious appointment!

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