Ultimate HR Manual — Western Edition

September 2011
Number 51

CCH
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EMPLOYEES REQUESTING TO RETURN TO WORK AFTER A DISABILITY LEAVE? EMPLOYERS, MAKE APPROPRIATE INQUIRIES!

— Claire E. Ellett, Associate with McMillan LLP. This article originally appeared in the McMillan LLP "Employment and Labour" Newsletter, dated August 2011. © McMillan LLP. Reproduced with permission.

The British Columbia Court of Appeal recently confirmed the legal test for *prima facie* discrimination in the context of an employee's request to return to work after being on disability leave. In a unanimous decision from the BC Court of Appeal, the Honourable Madam Justice Kirkpatrick, writing for the Court, held that there remains an obligation on an employer to make inquiries of an employee's condition before they can simply deny an employee's request to return to work from a disability leave.

In *Boehringer Ingelheim (Canada) Ltd./Ltée. v. Lynda Kerr* 2011 BCCA 266 [2011 CLLC ¶230-027], the Court dismissed the employer's appeal of a decision from the Supreme Court that had similarly dismissed the employer's judicial review of a decision from the British Columbia Human Rights Tribunal ("HRT"). The HRT held that the employer had discriminated against their employee, Lynda Kerr.

Ms. Kerr was hired by Boehringer Ingelheim (Canada) Ltd./Ltée ("BICL") in 1996 as a pharmaceutical sales representative. As part of her job, she was required to drive a vehicle and use a computer. In 1999, after being diagnosed with cataracts, she was informed by her doctors that she would likely lose her sight within two years. Ms. Kerr indicated to her employer that she would resign; however, BICL recommended that she apply for disability leave. Ms. Kerr did just that.

Fortunately for Ms. Kerr, the diagnosis she received from her doctors which predicted that she would completely lose her sight did not materialize.

In 2002, Ms. Kerr was informed by her insurer, Canada Life, that her long-term disability benefits would cease because pursuant to the policy, she was capable of working at some occupation. BICL became aware that Ms. Kerr wanted to go back to work and by as early as 2004, BICL was informed by Ms. Kerr's family doctor that she may be capable to return to work.

Despite this knowledge, BICL did not make further inquiries with Ms. Kerr or anyone else about their employee's capability to return to work. As a result, since she was not receiving disability benefits and was not working at BICL, Ms. Kerr was without income. In the meantime, she filed a complaint with the HRT alleging that she was discriminated against based on her disability and contrary to s. 13 of the *Human Rights Code*, R.S.B.C. 1996, c. 210, which provides in part:

(1) a person must not
(*a*) refuse to employ or refuse to continue to employ a person, or
(*b*) discriminate against a person regarding employment or any term or condition of employment
because of the . . . physical . . . disability . . . of that person.

In 2006, BICL gave Ms. Kerr a return-to-work plan (the "Plan"), however, the Plan was set to commence during her scheduled hearing before the Human Rights Tribunal, and as a result, Ms. Kerr refused to accept it.

After a lengthy hearing before the HRT, the Tribunal held that Ms. Kerr demonstrated on a balance of probabilities a *prima facie* case of discrimination as the employer's refusal to allow Ms. Kerr to return to work after she was on medical leave was discriminatory and contrary to section 13 of the *Human Rights Code*. At paragraph 559, the Tribunal cited *McLellan v. MacTara Ltd. (No. 2)* (2004), 51 C.H.R.R. D/103 (N.S. Bd. Inq.) for authority that:

> an employer has an obligation to patiently and carefully assess a disabled employee's condition and to assess her ability, which necessarily involves a dialogue with the employee, including being aware of the dynamic nature of an employee's medical condition which may change.

The Tribunal ordered BICL to pay Ms. Kerr compensation for lost wages (subject to certain deductions), compensation for lost bonuses, compensation for loss to her pension, and $30,000 as compensation for injury to her dignity, feelings, and self-respect, plus applicable interest.

As a result, the employer sought a judicial review of the HRT decision on the basis, among other things, that the HRT applied the incorrect *prima facie* legal test for discrimination. Both the Supreme Court and the Court of Appeal held that the HRT had appropriately applied the proper three-part test for determining whether there is *prima facie* discrimination as enunciated in *Communications, Energy & Paperworkers' Union of Canada (CEP) v. Domtar Inc.* 2009 BCCA 52 [2009 CLLC ¶230-012] at para. 36 which sets out that the complainant must prove that:

- he or she had (or was perceived to have) a disability;
- he or she received adverse treatment; and;
- his or her disability was a factor in the adverse treatment.

In conclusion, employers must conduct their own thorough assessments of all employees requesting to return to work from a disability leave before simply denying a return to work. The current case law establishes that an employer is entitled to carefully evaluate an employee's capabilities before accommodating an employee; however, the onus falls on the employer to independently make their own inquiries.

WHAT WOULD YOU DO . . .

With an employee who fails a pre-employment medical examination after accepting a conditional offer of employment?

Robert has applied for a position as an emergency services worker with your municipality. He passed a preliminary interview and an occupation-specific vision, hearing, and fitness assessment. Following the assessment, he submitted a formal application to your municipality and took part in two more oral interviews. After Robert successfully completed all of these steps, your municipality made him an offer of employment that is conditional upon successful completion of a standard medical examination and submission of a satisfactory driver's abstract and employment references. The standard medical examination involves the completion of a detailed data form and a comprehensive medical assessment by the physician. The medical form specifically asks the applicant to identify any "hospitalizations, surgery, accidents or fractures (injury), joint or orthopaedic condition(s)". Robert indicated "N/A" beside this section of the form. However, in the course of his recent medical assessment, the municipality's physician observed that Robert had an injury to his knee, which Robert then identified as an old football injury. A subsequent X-ray revealed significant osteoarthritis in the knee. The physician has now informed the municipality's human resources department that Robert is not medically cleared for work. As a member of the human resources team, you must now decide how to deal with

Robert's status in light of his failure to obtain medical clearance and his apparent omission of significant medical information from his data form.

What You Need To Know

Pre-employment medical examinations are often seen to be controversial. Employers who are hiring applicants for physically demanding or safety-sensitive jobs — particularly those where the applicants will in turn be responsible for other people's safety — have a strong interest in making sure that those they hire are fit to perform the essential duties of the job. On the other hand, job applicants often regard these examinations as physically invasive as well as an intrusion into their private lives. Pre-employment medical examinations can also reveal an applicant's disability, which is a prohibited ground of discrimination in every Canadian jurisdiction.

Fortunately, there is now a body of legal decisions with respect to pre-employment medical examinations that provide guidance to employers. Adjudicators in these decisions have stated that pre-employment medical examinations will only be acceptable in limited circumstances where they are *bona fide* occupational requirements, where they are conducted following a conditional offer of employment, and where they are restricted to gathering only the particular medical information necessary to understand if the applicant can perform the essential duties of the job in a safe manner. Human rights adjudicators have also made it clear that if an applicant has a disability that is uncovered during the pre-employment medical examination, the employer must consider whether it can accommodate the disability short of undue hardship.

What Actually Happened

The municipality decided not to hire Robert on the basis that his knee was so severely arthritic that he could not safely perform the duties of a firefighter either at that time or in the future. In addition, the municipality was disturbed that Robert had not been truthful about the condition affecting his knee in his completed data form and had not been forthcoming about it during his medical assessment. After he learned of the municipality's decision, Robert launched a human rights application alleging that he had been discriminated against on the basis of a perceived disability — that is, he alleged that his application for employment had been rejected based on the perception that he would become disabled — and that the municipality had failed to properly consider whether it could accommodate him. The Ontario Human Rights Tribunal found partially in favour of Robert. It concluded that the municipality had discriminated against Robert in its refusal to hire him, at least partly because of its conclusion or perception that he had a disability. Given that the municipality had not engaged in an assessment of whether Robert could be successfully accommodated, it had not established that he was incapable of performing the essential duties of the job. That said, the Tribunal found that Robert's lack of full disclosure would have independently led the municipality to refuse him employment, and that the municipality's concerns in this regard were genuine and reasonable and were not being used by the municipality to cover up an otherwise discriminatory refusal to hire. Given its conclusions, the Tribunal awarded Robert monetary compensation for the infringement of his right to be considered for employment without discrimination, but it declined his requests for damages for income loss and an order requiring the municipality to hire him as a firefighter.

(Based in part on *Davis v. Toronto (City)*, [2011] O.H.R.T.D. No. 814 (Liang).)

ON THE CASE

Board Rules That Conduct Was Sexual Harassment, Not Horseplay

On January 26, 2007, EM was working with two of her colleagues in the control room of one of Alberta's correctional facilities (the "Facility"). As a recent university graduate, EM had only become a full-time employee of the Facility in December. That said, she had quickly established herself as an important member of the team.

By all accounts, the staff of the Facility greatly enjoyed one another's company. Horseplay, teasing, and pranks were common features of the workplace as the staff found that this type of behaviour was an effective way to relieve the stress associated with their day-to-day duties. Although the jokes sometimes took on sexual overtones, no one ever indicated that the jokes were unwelcome nor did management ever intervene and ask that it stop.

After finishing the morning portion of their shift, EM and her two male colleagues began walking to the staff lunchroom. As they approached the men's locker room, EM's colleagues suddenly swept her off her feet and began carrying her into the locker room. What happened next is unclear.

In the complaint that she subsequently filed with the Facility's management, EM says that her two colleagues carried her through the locker room, eventually putting her face-up on a bench. While one of the men held her shoulders down, the other leaned towards her and undid her belt and trouser clips. The event only came to an end after another employee appeared in the locker room and came over to the bench. At that point, EM immediately ran out of the locker room. EM says that throughout the incident she repeatedly asked her colleagues to stop, later yelling "jumpsuit", which was a safe word that the staff had been taught to say if they were being hurt during training.

In relaying their own account of what happened to investigators, the male employees characterized the incident as harmless horseplay, in which EM was a willing participant. Each denied that EM had asked them to stop, instead stating that she was heard to be giggling throughout. Most importantly, both denied that EM's pants had been undone.

In any event, following the day's events, EM met with her supervisor and filed a formal complaint against her colleagues. After convening a formal investigation, the Facility concluded that EM was credible and her colleagues were not. Accordingly, because the conduct in question represented a significant breach of the Facility's sexual harassment policy, the decision was made to terminate EM's colleagues' employment for just cause.

Arguing that the Facility had acted too rashly in terminating the employment of its two members, the union promptly filed a grievance. In the union's view, the incident at the root of EM's complaints was exactly the type of horseplay that the Facility's management had condoned in the past. While the Facility acknowledged that its workers often engaged in horseplay, they nonetheless stated that there was a difference between horseplay and harassment. In this case, the conduct of the dismissed employees was clearly an example of the latter.

After considering the evidence and carefully examining the credibility of the three primary witnesses, the Arbitration Board decided that, given the totality of the evidence, EM's version of events was inherently more probable than those presented by her colleagues. While the event may have started as a prank, it did not end as one. By choosing to continue with their conduct over EM's demands to stop, the conduct of the dismissed employees became something more sinister than horseplay. Still, while the Board upheld the termination of one of the workers, it decided that the other employee was worthy of reinstatement since he had expressed remorse and did not appear to be the driving force behind the ill-advised prank.

While it should be obvious that the conduct described above clearly constitutes a form of harassment that would be universally unacceptable, this case shows the danger that exists when employers allow a culture of pranks and horseplay to develop unabated in their workplace. While workplaces can often benefit from a certain amount of joking and teasing, employers should be clear with their employees on what will be considered acceptable forms of behaviour. To this end, employers should ensure that they have a detailed harassment policy in place that is widely available and strictly enforced. By doing so, employers will avoid the consequences that are too often associated with pranks gone wrong.

(*Alberta (Solicitor General) v. Alberta Union of Provincial Employees (Sexual Harassment Grievance*), [2011] A.G.A.A. No. 6.)

Arbitrator's decision was not justified, transparent, or intelligible

Court of Queen's Bench of Manitoba, June 3, 2011

Under Westfair's prescription drug benefit plan, employees were reimbursed for the full cost of allowable prescription drugs. The plan was subject to a $10,000 lifetime limit or cap, at which point an eligible employee would be subject to an annual limit of $1,000 from that time forward. The union only became aware of this policy when Westfair changed its group benefits carrier. After entering into a new collective agreement, four affected employees filed grievances, and the union filed a policy grievance. All grievances were dismissed. The union brought an application for judicial review.

The application for judicial review was allowed. The arbitrator examined the competing arguments of the union and the employer on a point by point basis. Then, he concluded that he preferred the employer's argument, although he provided no explanation or reason for his decision. While the arbitrator's result may have been in the range of

acceptable outcomes, it was not justified, transparent, or intelligible regarding the findings and decision-making process. The grievances were remitted for a new hearing before a different arbitrator.

UFCW, Local 832 v. Westfair Foods Ltd., 2011 CLLC ¶220-040

Union did not violate its duty of fair representation

April 29, 2011

The union was the bargaining agent for a unit of employees of the Saskatchewan Gaming Corporation, carrying on business as Casino Regina. Moran worked for Casino Regina as a shipper/receiver/stock clerk. He complained to the union about the method of providing holiday pay. The union replied that the amount of holiday pay under the collective agreement exceeded the amount required under *The Labour Standards Act*. When the union brought the issue up with Casino Regina, the casino refused to deal with it at that time. After the union raised the issue again during collective bargaining, the collective agreement was changed to address the holiday pay issue. Moran brought a duty of fair representation complaint before the Board.

The complaint was dismissed. While the union did not have a certificate from the Board with respect to its representation of the bargaining unit, it had represented the unit for many years and, therefore, it had a common law duty to fairly represent employees for whom it bargained. However, the union did not violate its duty of fair representation. There was no evidence that the union discriminated against Moran or the other shippers/receivers/stock clerks, or that it acted in bad faith.

Moran v. RWDSU, 2011 CLLC ¶220-046

WORTH NOTING

Alberta Steps Up Employment Standards Enforcement

Alberta is ramping up efforts to improve fairness in the workplace with a combination of better enforcement and education. To respond to more complaints and to expedite investigations, six new Employment Standards officers are being hired and the use of third-party auditors will increase. To ensure that employers are better informed about workplace rights and responsibilities, new training materials are being launched.

The actions are part of the Alberta government's efforts to improve compliance with employment standards. A new 24/7 online complaint system was introduced in December 2010, and it has resulted in an increase in the number of complaints filed by workers against their employers.

Approximately one-third of complaints are resolved through an early resolution process. More complex files require additional time for investigations and can extend into several months. The Alberta government recently introduced a more transparent complaint process and more stringent audit procedures for cases where employers are suspected of violating the *Employment Standards Code* or Regulation. When necessary, external auditors will be brought in to review an employer's records. The cost for these audits will be borne by the employers themselves.

"Fairness in the workplace is important to Albertans, so just as we did with occupational health and safety, we're ramping up our enforcement of employment standards in Alberta and improving education at the same time", said Thomas Lukaszuk, Minister of Employment and Immigration.

A new Employment Standards Tool Kit for Employers has also been created to improve awareness of standards and to give employers a clear picture of their rights and responsibilities. For more information on employment standards, visit http://employment.alberta.ca/es.

British Columbia Plans To Reduce Domestic Violence in the Workplace

WorkSafeBC is in the process of developing a handbook and training resource for employers to better manage the risk of domestic violence in the workplace. The purpose of the guidelines is to provide information and training to assist employers with identifying signs and symptoms of domestic abuse and to communicate with employees about the

issue in a safe and supportive manner. British Columbia will be joining Ontario in its initiative of bringing greater awareness and guidance to the issue of domestic violence in the workplace. For more information on this initiative and to view a copy of the materials, which are due to be released this fall, please visit the WorkSafeBC Web site at: http://www.worksafebc.com.

Manitoba Addresses Workplace Violence

Manitoba's *Workplace Safety and Health Regulation* (Manitoba Regulation 217/2006) has been amended by Manitoba Regulation 107/2011 to include new requirements to protect workers from violence in the workplace. The changes came into effect on August 31, 2011, and require workplaces to develop and follow a violence prevention policy if they provide public services, including the following:

- health care (see section 11.8 for a description of workplaces);
- pharmaceutical dispensing;
- education;
- financial;
- police, corrections, or other law enforcement;
- security;
- crisis counselling and intervention;
- taxi cab and transit bus;
- retail sales (between 11 p.m. and 6 a.m.); and
- licensed premises (within the meaning of the *Liquor Control Act*).

Workplaces not described above must still assess the risk of violence to workers at the workplace and develop and implement a violence prevention policy if the assessment identifies a risk.

Minimum Wage Update — Manitoba

Effective October 1, 2011, the minimum wage will increase to $10 per hour, up from the current rate of $9.50.

The 50-cent increase per hour places Manitoba just above the average Canadian minimum hourly wage. Nine other jurisdictions have announced increases in their minimum wage for 2011. Manitoba joins seven other provinces and territories that will have minimum wages of $10 or more per hour by May 2012.

CPP Update

The Canada Revenue Agency ("CRA") has announced that CPP deductions for older workers are undergoing a change effective January 1, 2012. As of that date, employers will be required to deduct contributions from the earnings of employees aged between 60 and 70, even if they are already receiving CPP benefits.

Any employees under 65 years of age who are receiving a CPP retirement pension will be required to pay contributions; employees who are over 65 but less than 70 years of age will also have to pay contributions unless they file an election form with their employer to stop the deductions. This new form (CPT30) will be available as of November 2011 on the CRA's Web site (search under "CPT30".).

Failure to deduct appropriate CPP contributions could cost employers penalty and interest charges.

Q & A

Should an employer treat a pregnant employee as "disabled" for the purposes of human rights legislation?

While the answer to this question should be an obvious "no", too often employers fall prey to stereotypical ideas about the types of work that women can and cannot do while pregnant. Such was the case in the Human Rights Tribunal of Ontario's decision in *Graham v. 3022366 Canada Inc.*, [2011] H.R.T.O. 1470. In that case, the employer, on its own accord, instructed its pregnant employee to obtain a medical certificate from her doctor stating that, because of her pregnancy, she was unable to perform any of her duties. Although the employee duly complied with her employer's instructions and obtained the necessary doctor's note, she did not view herself as disabled. As a result of the employee providing the medical note, the employer refused to schedule the employee for any additional shifts.

In finding that the employer had engaged in discriminatory conduct, the Tribunal noted that the employer's decision to remove the employee from the schedule was arbitrary and based on stereotypes that were not supported by the facts. On this basis, the employer was ordered to pay the employee significant damages.

While an employer must accommodate the needs of a pregnant employee, accommodations may not be necessary in all circumstances. As noted above, the mere fact that an employee is pregnant does not mean that she is restricted from all or even certain types of work. Illness related to pregnancy constitutes a valid health-related reason for absence from the workplace, but as the Supreme Court of Canada has plainly stated in *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219, pregnancy itself is neither an illness nor a disability.

Accordingly, before jumping to conclusions about the type of work that a pregnant employee can or cannot do, employers should communicate with their employees and together they should assess what changes, if any, will have to be made to the employee's job during her pregnancy. To the extent that employers fail to follow this basic advice they risk becoming the target of a costly human rights proceeding.

NEWS FROM THE U.S.

The following article, "Expert defines five global trends affecting strategic HR", appeared in Ideas and Trends*, #724, July 13, 2011, published by CCH Incorporated, United States, a Wolters Kluwer business, and is reproduced with permission. If you wish to place an order or would like more information on U.S. products, please contact our Customer Satisfaction Hotline at (416) 224-2248 or 1-800-268-4522.*

Expert defines five global trends affecting strategic HR

"Organizations are noticing the way things are changing at work and they're incorporating it into their overall HR strategy", Gary Kushner, president and CEO of Kushner & Company in Portage, Michigan, told a standing-room only audience at the annual conference. "The biggest trend we're seeing is how organizations are valuing their people. Today, the key is people. How can we leverage our people to gain a competitive advantage?"

Kushner highlighted the following five global trends having the greatest impact on strategic HR:

1. Technological advancement. "The work expectation has changed", Kushner told conference attendees. "Because of technological advancements, employees are ever-on-call and available. We need to encourage our managers to be careful putting that expectation on employees. Not only is it not good for employee job satisfaction, but there are legal implications as well. For example, in May, the Department of Labor created an App so non-exempt employees can track the amount of work done outside of 'regular business hours'."

2. Outsourcing. Kushner encouraged attendees to remember that as outsourcing of various functions is used more and more in today's workplace, the impact on remaining employees can be great. "Remaining employees can't help but be concerned about if and when they will be outsourced", he explained.

3. Changes in demographics and diversity. Today's workforce is made up of Traditionalists (b. 1928–1945), Baby Boomers (b. 1946–1963), Generation X (b. 1964–1980), and Generation Y (b. 1981–1999). And soon to be joining the

workforce is the "Gen-Wired" generation, those born between 2000 and today. "Never before have we had a workforce with more than three generations in the workplace", noted Kushner. "In addition, the trend of people retiring at earlier and earlier ages in the late 1990s reversed itself in the first decade of the new millennium when people started staying later. In addition, when retirement benefits were first being developed, in the 1950s and 1960s, the prominent American demographic was mom stays home, dad works and together they have 2.3 kids. Now, as demographics around age and family diversity change, organizations are beginning to realize that current benefits are not sufficient."

4. Changes in worker attitudes and/or values. "Traditionalists live to work. These are the people that love going to work, are proud of their jobs, and have probably had the same job their entire career", Kushner explained. "Today, however, employees work to live. They work to develop the type of lifestyle they've always dreamed of having. Today, the average U.S. worker stays with one employer for no more than 3.5 years. Consider that graduates in 2020 won't have six different jobs in their lifetimes, they will have six different careers."

5. Globalization. "Globalization is coming no matter how big or small your business is. It's affecting everyone", said Kushner. He explained how a Phoenix, Arizona McDonald's globalized itself by setting up a computerized drive-through. Orders at this particular McDonald's go to a call centre in Omaha, Nebraska. "Serving customers in this way saves 10 seconds per customer. McDonald's has now globalized their drive-through order placements; can you imagine what's next?" said Kushner.

Source: "The Changing Nature of Work: Five Global Trends Affecting Strategic HR", presented on June 27, 2011, by Gary Kushner, SPHR, CBP, President and CEO of Kushner & Company.

CCH WORKDAY

CCH Workday is an online HR news blog published by CCH Incorporated, United States, a Wolters Kluwer company.

Expert suggests new rules for effective performance management

(Posted August 22, 2011)

In these times of shrinking budgets and increasing demands, maximizing the potential of an organization's human capital is a top priority in both the public and private sector. The promise of *performance management* ("PM") is to drive high performance, but the truth is, PM is broken, says Dr. Elaine Pulakos, president of PDRI and an industrial-organizational psychology author and expert. Despite spending enormous amounts of time and money on PM activities, most organizations see little value from the PM process. With such an investment, why has PM yielded so few results?

Dr. Pulakos asserts that it's time to throw out the old rules and follow these *three new rules* of PM to improve retention, optimize performance, and, ultimately, boost your bottom line.

1. Reset your mindset. The prevailing view of PM is that it is an HR system consisting of steps, tools, forms, rules, procedures, and software programs. However, research has clearly shown that it is the positive, day-to-day leadership behaviors that comprise the core of PM — and not formal PM systems — that yield bottom line results and employee engagement. The promise of PM can only be realized if organizations fundamentally change their mindset about what PM is. Managers and employees spend the lion's share of their day engaging in PM without even knowing it — what needs to get done, by when, and what defines success. Shifting the collective mindset in the organization requires everyone understanding that PM is not just a once or twice a year event. It is a day-to-day activity for which everyone is responsible.

2. Ditch the formal system — build the informal one. Over 50 years of research has attempted to improve PM systems in every way imaginable — by changing what's rated, who makes ratings, how often feedback is given, what rating scale is used, etc. Sadly, none of these strategies have been shown to improve attitudes towards PM. Despite this, the quest for the perfect PM solution goes on, yielding increasingly elaborate, burdensome, and expensive PM systems that managers and employees alike bemoan as having no value. This focus on a formal system has caused us to lose sight of what effective PM really is and derailed us from getting there. Instead, we need to focus on the informal, day-to-day PM behaviors that have proven to lead to high performance and engagement: convey how employees' work and roles fit into the big picture; communicate real-time expectations and goals on a regular basis;

increase the frequency of real-time positive/negative feedback to work; and develop employees on-the-job with exposure to varying roles and situations.

3. Change your company's DNA. More important than initiating change is actually sustaining change. Give your new approach to PM some staying power by making it a part of the organization's DNA. Establish operational triggers to continually reinforce effective and ongoing PM behavior when it's needed and does the most good. To be successful, organizations need to weave this "Everyday PM" philosophy into the fabric of the culture for company-wide adoption.

Dr. Pulakos says performance management is profoundly broken but should not be abandoned — it's actually essential for organizational success. "But, at a time when conserving fiscal resources is also essential, money shouldn't be wasted on systems and processes that haven't been proven to work. Performance management needs to be turned right-side-up by putting the people in front of PM, not behind it. Following these new rules will not just put you back on track, but will put your organization on an entirely new track — benefiting your human capital as much as they benefit your organization."

Study identifies reward practices' impact on perceptions of fairness

(Posted July 27, 2011)

When it comes to reward fairness, it's neither total pay nor salary increases that have the biggest impact on employees' perceptions of fairness. That honor goes to career development opportunities, according to a new research report released by WorldatWork, Hay Group, and Loyola University Chicago professor of human resources, Dow Scott, Ph.D. The report, "Reward Fairness: Slippery Slope or Manageable Terrain?" reveals the top five concerns in reward fairness today, identifies the criteria that have the biggest impact on employee perceptions of reward fairness, and uncovers what works — and what doesn't — in improving perceptions of fairness.

From the perspective of reward professionals, the top five concerns in reward fairness are:

(1) Career development opportunities;

(2) Merit increases;

(3) Base pay amounts;

(4) Non-financial recognition; and

(5) Employee development/training.

"Reward professionals view career development opportunities as the top reward fairness concern because growth opportunities are in high demand by employees, while at the same time, career development processes are not particularly developed in many organizations", said Tom McMullen, Hay Group's North American Reward Practice Leader. "Career development concerns are also the number one retention issue for employees, according to our employee opinion database."

Surprisingly, variable pay (i.e., bonuses, incentives) was not among the top five concerns in reward fairness. "Variable pay is likely not ranked as a top concern, because a decent portion of these plans are based on corporate or business unit performance measures as opposed to individual performance measures", said Dow Scott, Ph.D., Professor of Human Resources and Employment Relations, Graduate School of Business, Loyola University Chicago. "There are also fairly systematic reporting processes in place in organizations that provide periodic communications as to how these programs are performing, resulting in less ambiguity."

The research report by WorldatWork, Hay Group and Loyola University Chicago's Dow Scott, also identified the top three criteria that impact reward fairness. These are:

- Individual performance;
- Work responsibilities; and
- Overall organization performance.

Items that did not rank as highly include:

- Team/department performance;
- Seniority/tenure with the organization;
- Time in job; and
- The potential of the individual employee.

According to Hay Group's Tom McMullen, "HR organizations would be well served to establish effective processes around job design and organization design, work measurement systems, person-role fit assessments, and performance assessment processes. Improving these HR infrastructure processes should substantially enhance the perception of fairness in organizations."

When asked what works particularly well in improving the perceptions of reward fairness in organizations, respondents overwhelmingly identified effective reward communications, followed by external benchmarking, reward strategy and design, and non-financial recognition programs. According to WorldatWork's Kerry Chou, CCP, compensation practice leader, "Communication is king in improving perceptions of reward fairness. The best organizations focus not only on the core messages to be communicated, but also the most effective messengers and channels. In addition, these organizations devote significant energy to determining how to sustain core messages and equip managers to effectively communicate them."

The research study also addressed the factors that have eroded perceptions of reward fairness in organizations. The number one response was the poor economic environment (e.g., pay freezes, layoffs, pay cuts), followed by inconsistent application and playing favorites. Reward communications (#3) and leadership (#4) round out the list. "While some factors, such as the economy, are outside of our control, equipping managers to more equitably distribute and communicate rewards can have a huge impact on the perceptions of fairness within an organization", concluded Dr. Scott.

Source: WorldatWork; www.worldatwork.org

Survey reveals one-third of employees lunch at their desk

Posted: August 31,2011

One-third of employees have lunch at their desk each day, according to a survey by Right Management. But another one-third takes no lunch, or only occasionally. During July and August, Right Management polled 751 North American workers via an online poll and asked: "Do you regularly take a break for lunch?" Thirty-five percent of respondents said, "Yes, almost always"; 34 percent said, "Yes, but usually stay at my desk"; 15 percent said, "Only from time to time"; and 16 percent said "Seldom, if ever".

"Lunch patterns allow us to infer a few things about the North American workplace — and one thing that we already know is that the pressure for productivity and performance can be relentless", said Michael Haid, senior vice president tlent management at Right Management. "This pressure is showing up in various ways like our finding that one-in-three employees are very likely now in the habit of taking lunch at their computers and phones and with supervisors and colleagues. So whether it's a true break is open to question. Then there are 31 percent who take a lunch break seldom or just once in a while. Only a minority of employees, it seems, take time away from their desk — and even some of them probably go to a workplace lunchroom. One has to wonder how many workers actually leave the workplace and get a chance to clear their heads and what the downstream toll of lack of true breaks and downtime might be for employee well-being and overall organizational performance."

The workplace culture or management's example might make workers feel compelled to stay at their desks, observed Haid. "Employees may feel they have to apologize for stepping out, but in the long run this kind of company culture does not help improve performance or engagement. Sure, workers may feel devoted to their work, which is fine, but given the level of stress in today's workplace, I wonder if the reluctance to take a break is an expression of devotion or a negative consequence of the unrelenting pressure some organizations are exerting on their workforces to get more done with fewer resources. Taking time away from one's desk for lunch would help reduce tension and boost energy. But our research results might lead us to ask, is that still a real option for people now?"

"We've certainly come a long way from the three-martini lunch of a generation ago", Haid concluded. "But we have to question if we've gone too far in the other direction."

Source: Right Management; www.right.com.

ULTIMATE HR MANUAL — WESTERN EDITION

Published monthly as the newsletter complement to the *Ultimate HR Manual — Western Edition* by CCH Canadian Limited. For subscription information, contact your CCH Account Manager or call 1-800-268-4522 or (416) 224-2248 (Toronto).

For CCH Canadian Limited

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