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Editor's Column: The Three Ways to Manage Your Employees



I recently went through an excellent session using the ZeroRisk HR assessment to help me become a better manager of my own employees. One of the most insightful things I learned was to distinguish when to *direct* employees, when to *coach* them, or when to *delegate* to them. This is a major distinction.

Directing – When you have an employee new to a job function or business in general, you might have to direct their activities until they meet the necessary learning curve. This is, of course, a control-based approach to management that makes sense at times, especially if you're a control freak or you're managing people who have control issues. For example, Bob Hurley, the well-known coach of the St. Anthony's High School basketball team in Jersey City, NJ, focuses on directing his young men, not just on the basketball court, but in their lifestyle in general. As a result, he has a 100% graduation rate – practically unheard of for an inner-city basketball team. The idea of directing employee behavior was the basic principle of Scientific Management made famous by Frederick Winslow Taylor in the early 1900s. Because most jobs at that time were manual in nature and easy to perform, this approach used time and motion studies to analyze job tasks, and then told workers the best way to stack the bricks, shovel the coal, or pull the loom. Managers didn't want employees to think for themselves. The Catch-22 today is that the person you can control you generally don't want working for you – and the less you control, the more you accomplish! So use control as a management style only when absolutely necessary.

Coaching – This is more about empowerment than micromanagement. The best coaches ask questions and allow employees to discover the answers for themselves. When they attempt to frame the employees' efforts, they do so from "their side of the line," providing insight as opposed to control. This is akin to teaching people how to fish. The best coaches expect and foster taking action and moving past blockages. They know when to push or to back off. Remember this: If your coaching feels too much like control to employees, you'll generate a flight or fight response – even if everything you are trying to say is completely logical.

Delegating – Over the years, I've learned to delegate effectively. This is one of the most important skill sets for a manager. Of course, the danger of delegation is that the employee will make a mistake and suffer the consequences. I try to mitigate the possibility of

mistakes by delegating through writing, otherwise known as a standard operating procedure (SOP). I won't just write down *what* I do, but my best practice on *how* to do it. I then make sure that the employee understands the SOP and see if they have any questions. I'll also provide them with any time and training necessary. When I delegate, I have a "one-mistake rule." Because I learned my skills by making mistakes, I realize that my employees will have to do the same. However, there's absolutely no reason to make the same mistake twice. Allowing employees to do so is a management failure.

The work we did with ZeroRisk coaching went into these areas far more deeply and challenged us in other areas as well. This process produced some of the most effective communication with employees I've worked side-by-side with for many years. To learn more about the ZeroRisk HR program, contact Mike Poskey (Mike.P@zeroriskhr.com) or call him at (800) 827-5991.

Understanding the Value of Great HR



One of the career challenges HR executives face is being able to articulate the bottom line difference they can make. In part, this is because very few of them focus on making those types of distinctions as their activities are non-strategic in nature. I recently became engaged to help hire a high-end HR executive who will make at least \$150,000 per year. The reality is out of the 3,000 small to midsized companies that use our program, I'd be surprised if as many as five HR executives earn that type of income. Larger organizations justify the expense because they can spread it over a greater number of employees. Actually, the larger the organization, the lower the HR expense ratio per employee. According to Bernston and Associates, HR costs the average employer \$1,000 to \$1,500 per year. In a sense, if you have 50 employees, you have a \$65,000 HR executive.

"There is magic in doing."
- George Gurdjieff

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So here's the challenge: *Even if you're a small to midsized company that doesn't have \$150,000 per year to pay an HR executive, you still need strategic HR initiatives!* Otherwise, internal pressures will undermine your sales and marketing efforts.

If you doubt the return on investment of good HR practices, run your numbers on the HR That Works Cost Calculator. Even a conservative analysis will show the incredible opportunity available. However, you'll need to make a commitment of both time and money to make it happen. Think of it this way: Suppose you remain "nonstrategic" in your HR practices. So what if you have poorly trained managers, below average employees, high claims, low productivity, and a ton of drama? Perhaps you're familiar with this situation. In any case, there's no reason not to "get" the importance of *working on* HR instead of just *being in* HR. Whether you have 10, 100 or 1,000 employees the need remains the same.

There are only three solutions:

1. Use a program such as HR That Works and commit to a schedule to implement it.
2. Hire a coach to help you implement a program such as HR That Works.
3. Have third parties come in and do things for you (otherwise known as "fractional" HR).

What will be your next strategic HR objective – and how will you achieve it?

What *Wal-Mart v. Dukes* Means for Wage & Hour Law, and Employers

By now, most of you who follow employment law have heard about and possibly read the U.S. Supreme Court's decision in [Wal-Mart v. Dukes](#), which overturned certification of a class action sex discrimination case brought on behalf of 1.5 million current and former female Wal-Mart employees. (If not, the recent [FR Alert](#) on this case will bring you up to speed.) Although *Dukes* is a sex discrimination case, it will probably have a major impact on class actions in other areas of the law, including wage and hour lawsuits.



- *Dukes* will likely make it more difficult for plaintiffs to argue that large classes should be certified absent concrete evidence of a common corporate policy or practice tying the claims of class-members together. This will be particularly important in cases where the actions of individual managers are at issue, such as plaintiff allegations that employees were required to work "off the clock" contrary to established policies.
- It's unsure how the courts will apply *Dukes* to collective actions under the Fair Labor Standards Act. The *Dukes* decision dealt with a class action certified under Federal Rule of Civil Procedure 23, which governs most class actions in federal court. In contrast, FLSA collective actions proceed under a different set of rules specific to the FLSA. The standards for certifying a class or collective action are similar - Rule 23(a)(2) requires questions of law or fact common among the class members, while a collective action under 29 U.S.C. § 216(b) requires class members to be "similarly situated." However, there are subtle but potentially important differences, and the standard for preliminary certification of a collective action is generally a lower bar than for certification of a Rule 23 class action. That being said, although *Dukes* might not apply directly to FLSA collective actions, it will probably exert a significant influence over courts' analysis of such cases.

- One likely effect of *Dukes* will be to push more wage and hour class action lawsuits into state court. Because *Dukes* governs class certification in federal courts, plaintiffs' attorneys in states with more liberal class certification rules now have a strong incentive to file their cases in state court under state minimum wage and overtime laws, without reference to the FLSA and federal law. Although the impact of this shift will vary from state to state, federal courts are frequently regarded as a more favorable jurisdiction for employers than their state counterparts. Thus, while *Dukes* is a victory for employers, it might simply shift the wage and hour fight to less favorable ground.

Insights for Employers:

Although the esoteric procedural issues raised in *Dukes* will be of great interest to wage and hour litigators, what, if any, practical implications does the decision have for employers? Although the ruling does not usher in any sweeping changes for how employers conduct their day-to-day compliance activities, it does emphasize the importance of organization-wide policies and practices as both a tool for defending against wage and hour claims and a potential source of vulnerability.

Dukes strengthens the case for employers to adopt and effectively implement strong policies prohibiting wage and hour violations. For example, a company policy that strictly prohibits off-the-clock work and requires accurate recording of work hours, combined with an effective training and compliance program, might go a long way toward heading off class or collective action claims alleging that individual managers violated the policy by requiring or permitting off-the-clock work.

At the same time, *Dukes* might place an even brighter spotlight on cases based on a widespread company policy or practice. For example, claims alleging that an employer systematically misclassified specific job titles as exempt might have the necessary element of commonality among members of the class that the Supreme Court found lacking in *Dukes*.

The bottom line: Be sure to review and update your wage and hour policies, regularly, train supervisors, and audit compliance.

Article courtesy of Worklaw® Network firm [Franczek Radelet](#).

Employer Responsible for Worker Who Trips on Dog While Working at Home

In the recent case of [In Re: the Compensation of Mary S. Sandberg](#), an Oregon court overruled the Workers Comp Board and held that a JC Penney decorator, who was allowed to work from home, was covered by her Workers Comp policy when she tripped over her dog unloading a van.



Because she could not safely store all of the items in the vehicle at one time, she stored the excess items in her home garage. Her employer instructed Sandberg not to store these excess products at the studio, but to keep them at her home or any other place where they would be safe and dry. Thus, she used her home garage to store samples that from time to time she would need to exchange with other samples and materials that she kept in her van.

On the Saturday before the date of injury, a sale collection had ended, with a new collection beginning the next day. Because of the fabric sale change, Sandberg needed to remove the "old" fabrics from her van and replace them with fabrics for the new sale that were being stored in her garage. She was walking out her back door toward the garage to change the fabrics when her foot came down and she "felt something move." Noticing that her dog was underfoot, she shifted to her other foot, lost her balance, and fell, sustaining a right distal radius fracture."

Sandberg also regularly performed some work tasks, such as preparing bids and other paperwork, in her home. The employer denied her claim for compensation for the injury, a decision approved by the administrative law judge (ALJ) affirmed the denial, as did the Workers Compensation board.

When Sandberg appealed this decision, the court ruled that:

"In order to be compensable under Oregon law, an injury must 'aris[e] out of' and occur 'in the course of' a claimant's employment; ORS 656.005(7)(a). Because the board did not determine whether claimant's injury occurred in the course of her employment, that issue is not before us. The only issue on review is whether claimant's injury arose out of her employment. Thus, our focus is on whether claimant established a causal connection between her injury and her employment, that is, whether claimant's injury resulted from a risk connected to either the nature of her work or her work environment.

"[O]nce it is established that the home premises are also the work premises * * *, it follows that the hazards of home premises encountered in connection with the performance of the work are also hazards of the employment. [Editors Note: such as a dog lying around.]

" * * * That the employee is a telecommuter or other home-based worker should not, in and of itself, make any difference. Was the risk of injury a risk of this employment? So long as the employment subjects the employee to the actual risk of injury, the argument follows that the injury should be compensable.

"Here, claimant was walking to her garage for the sole purpose of performing a work task. She fell while moving about an area in which she had to move about in order to perform the work task, given the conditions of her employment. Therefore, we conclude that claimant's injury resulted from a risk of her work environment. As such, it arose out of her employment."

The bottom line for employers: make sure that telecommuting employees have safe workplaces and proper insurance coverages. HR That Works Members should use the Home Based Worker Checklist.

Setting Up a Sales Compensation Plan

Sales compensation can be a tricky affair to master. Any plan should answer these basic questions:

- What is your overall goal?
- What is working and not working about the current plan?
- What do you need to eliminate or improve and what should you exploit further?
- Who is involved in designing the plan? Who can impact the plan and how will they be treated?



- What math will you use to establish a base salary, commission, bonus, any caps on income, frequency requirements, etc. – a percentage of what, when, how, where, etc.?
- How can you test the plan before you roll it out?
- Where can the plan be manipulated or even sabotaged?
- How does your plan compare to that of the competition?
- Who can review or provide a second look at your plan?

Recent DOL Disability Violation Enforcement Activities: Employers, Beware!

Here are four recent cases in which the Department of Labor went after companies for ADA violations. These settlements are far lower than if private counsel were litigating the suits and interested in a big jury verdict (which average more than \$200,000):



1. [EEOC Sues Tideland EMC for Disability Discrimination](#)
The U.S. Equal Employment Opportunity Commission (EEOC) filed a disability discrimination lawsuit against the Tideland Electric Membership Corporation for not accommodating an employee, and then firing him because of his disability. The employee takes a legally prescribed narcotic medication to manage a chronic pain condition. After learning about this, Tideland EMC terminated the employee, without giving him time to change his medication regimen to keep his employment. The [Americans with Disabilities Act](#) outlaws discrimination against an employee based on a disability.
2. [ENGlobal to Pay \\$100,000 to Settle EEOC Disability Discrimination Suit](#)
ENGlobal Engineering, Inc., a Texas-based engineering firm, will pay \$100,000 and additional remedial relief to settle a disability discrimination lawsuit by the EEOC. ENGlobal unlawfully fired an employee because it mistakenly assumed that his multiple sclerosis would limit his ability to work.
3. [Retailer Finish Line Settles EEOC Disability Discrimination Lawsuit](#)
Indiana-based retailer Finish Line, Inc. agreed to settle a disability discrimination lawsuit by the EEOC. Finish Line refused to grant an employee with a physical impairment a transfer to an available CSR position as a [reasonable accommodation](#). The Americans with Disabilities Act requires employers to accommodate employees reasonably with disabilities, as long as the accommodation doesn't cause an undue hardship.
4. [Surveying Company to Pay \\$77,000 to Settle EEOC Disability Discrimination Lawsuit](#)
Fisher, Collins & Carter, Inc. (Ellicott City, MD) will pay \$77,000 and other remedial relief to settle a disability discrimination lawsuit filed by the EEOC. The company illegally discriminated against and fired an employee of 15 years after finding out that the employee had diabetes and high blood pressure.

The first thing to notice about these cases is the breadth of claims: A change in medication, a perceived MS disability, a shoulder injury, and diabetes. What's more, the courts rejected the employers' argument that many of the workers involved were "poor performers."

Bottom Line: Learn how to manage poor performers who might have a disability, in a way that doesn't land you in court!

Tough Days Ahead for Managers Who Don't Want to Be Learners

Today's "squeeze economy," in which we're trying to get more out of everybody and everything, without having to pay for it, put managers under overwhelming pressure to perform. What can you do about it?

- Keep growing and pushing yourself to work on your "highest and best use." Focus on those "A activities" that produce bottom-line results. Next, delegate or outsource the B level activities (administrative functions) to the extent possible. Finally, ditch the C activities, which are simply time-wasters. Be a freak about doing this if you want to survive without burning out.
- Become a great communicator. Whether you're passing along the leadership vision, mission, goals, and values of your organization; working on an individual employee's performance; or trying to learn more about what motivates employees, train yourself in communication. To be great at managing conflict, change, performance, engagement, career paths, strategic planning, and so forth without studying these disciplines, you'll need more than experience or osmosis. So turn off your TV or computer game, ditch that fantasy league or online gossip, and pick up a book or program that will help you learn in these areas. Of course if you have access to the HR That Works program, the special reports, training modules and webinars would be a good place to start.
- Learn what employees want from you:
 - Be clear with them
 - Don't play favorites
 - Do what you say you're going to do, when you said you'll do it
 - Provide feedback on a regular basis
 - Help define their career path
 - Keep yourself emotionally balanced

Remember, a poor relationship with managers is one of the top three reasons for employee turnover. Managers also influence the other two reasons (hiring a misfit, or failing to provide career growth and opportunity).

A word to the wise ...

Form of the Month

The Seven Commandments of Social Media Use ([PDF](#))

Use this tool as a starting point for defining your basic commandments. Once it's done, go down to Kinko's, blow it up, and place it where everyone can see it!

