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Nathaly Pinchuk
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Thawing the 'Frozen Middle'

Tips for overcoming middle management malaise

A few years ago, a major accounting and consulting firm surveyed middle managers around the world. They found that 20 percent were dissatisfied with their current employer and another 20 percent were actively looking for another job. One of their pet peeves was a lack of prospect for advancement. They also felt that they were getting all their work done but not getting properly compensated. Many were frustrated trying to balance work and personal time. In short, the people in the middle of the organization, what some refer to as the glue that holds everything together, were not feeling the love from their employers. The consulting firm actually referred to them as the 'frozen middle', stuck between the employee and senior leadership groups.

If we were to do the same survey today, the results would be remarkably similar. That's definitely a problem since the senior executives rely on these sergeants to lead their troops into battle every day. How should organizations deal with the malaise in middle management? Consider ways to improve communications, increase direct engagement and acknowledgement, refocus middle managers towards performance goals that are linked to rewards and offer them a path to career progression. Then look at how middle managers can improve their own job satisfaction and increase their opportunities for continuing success.

What the Organization Can Do

Acknowledgement

Senior managers play a crucial role in helping their middle managers feel appreciated and understood. When middle managers talk about feeling that their work is not recognized, they are specifically referring to their superiors. Senior managers must engage their middle managers so that they feel part of the decision making as well as the delivery. Middle managers deliver the messages they are given. If they are reminded that they are important and valued, they will pass that along to their work teams. Increasing their engagement and participation are vital to their personal and organizational success.

Performance Goals and Rewards

Middle managers also need to see where they fit into the strategic objectives of the organization. They need concrete objectives, examples and messages so that they understand their role and how it contributes to organizational success. There should be a recognition of this contribution through bonuses and incentives when applicable. Money alone does not drive most middle managers. They want to be treated fairly and to be recognized on a regular basis. Problems will arise when they see others getting an advantage or perk that they didn't receive. Inconsistency leads to dissatisfaction.

Career Progression

Organizations should always try to recruit their managers internally. Bringing in new people, especially at the

executive level, can cause a great deal of frustration for middle managers. This sends the unintentional message that the people already here are not good enough which has a detrimental effect on the workplace. The answer is to do a combination of internal and external recruitment. Also, offer training, support and maybe even coaching to middle managers to let them be considered for higher level positions. Even if there are limited opportunities above them, there is always the possibility of a lateral transfer or job swap with a middle manager in another department. In some ways, it is not necessarily about the promotion itself but being considered for it that's important.

What the Middle Manager Can Do

Continue to Grow

There is a great opportunity in being a mid-level manager. It comes with a level of respect and responsibility that need to be honoured and cherished. Many are given these opportunities to see if they have the potential to move ahead in the organization. This only works if we work for it. The most successful middle managers are those who continue to learn and grow throughout the middle of their career. In some cases, that may be the highest step they reach on the corporate ladder but they will truly enjoy it.

Respect Those Above and Below

A middle manager must respect the people above and below them if they want to earn that respect for themselves. They are leaders and they are listened to and followed by the people below them. That makes what they say about those above them really important. If

"The people in the middle of the organization, what some refer to as the glue that holds everything together, were not feeling the love from their employers."

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Perspective



Brian W. Pascal
RPR, CMP, RPT
President

President's Message

Innovation: The Answer to All Our Problems

Innovate inside the box

Innovation is the answer to all of our problems. Really? Innovation is certainly the key catchphrase in the modern management lexicon. The other one is agile. Now I'm certainly not as agile as I used to be, but I'd like to think that I can still be innovative. That doesn't mean however that I am prepared to follow the rest of the lemmings over the side of the mountain for the sake of innovation. There are some things that we should be careful about moving too quickly to change, mostly because they still serve a useful purpose.

My thinking is that it is always good to be innovative and a little bit different in order to stand out from the crowd and the competition. I also need to remind myself that while change is almost always good, it is not always for the better. Let's look at a couple of examples of new thinking or innovation in management. First, let's look at technology and how it is changing the landscape of talent acquisition and management.

Analytics and big data are growing in popularity in staffing and recruitment because they are far superior to our old hunt and peck systems of the past. They collect base demographic data and build a computerized corporate data bank of information that be mined later. The

system will sort through the data using complex algorithms and provide HR and managers with patterns and matches. But even with all these technological improvements, the humans will still be deeply involved in the all of the processing and recruiting that follows.

Performance appraisals are another hot topic for the innovative discussion. The latest recommendation is to get rid of them altogether. I would be the first to admit that I have yet to find a system that doesn't make performance reviews a detested chore, but what's the alternative? Let employees self-manage. Okay, you go first. There's a good reason why we have annual performance reviews. They deliver results by allowing for feedback to employees and recommendations for improvement. Can we make them better? Absolutely. But let's innovate inside the box without throwing out the box entirely.

I have one more thing for you to consider. The modern, innovative workplace has to be flexible in terms of the working hours, the benefits that are provided and the freedom that individual employees have to direct their careers. That's what the innovation experts tell us. I'm all in favour of flexibility — as long as I am the one who controls expenses and the work

flow. If it makes sense and we can get the work done from home, I'm in full agreement. Same with flexible benefits. If it costs roughly the same, I'll sign on. I think that sometimes we confuse flexible and elastic. I have no desire to be stretched beyond my budget or managerial comfort zone.

Brian Pascal is President of IPM [Institute of Professional Management].

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Feature

The House is Greener on the Other Side

No overtime exemptions for cannabis greenhouses in Alberta

In October 2018, Alberta became the province with the highest minimum wage in Canada. This change caps off a list of additional labour costs for the farming industry. With the rapid growth of the cannabis industry, the legalization of cannabis and concerns over labour shortages, it will be interesting to monitor the impact the additional costs will have on farming in general, and more specifically, cannabis production.

2018 Changes to Exemptions for Farmers

In general, farm workers in British Columbia are entitled to minimum wage and vacation pay, but are not entitled to general holiday pay or overtime. In Ontario, farm workers are not entitled to minimum wage, general holiday pay, vacation pay or overtime. The three major changes in 2018 for Alberta's farm workers are entitlements to minimum wage, general holiday pay and vacation pay, which farm workers were not entitled to before January 1, 2018.

Changes to Greenhouses and the Cannabis Industry

An important implication of these changes is whether the fledgling cannabis industry in Alberta even qualifies for Alberta's more limited exemptions. Currently, cannabis production is unlikely to qualify for the exemptions because it arguably does not engage in the primary production of grain, seeds, fruit or vegetables. However, even if it did, cannabis production in greenhouses would be excluded, because the Government of Alberta (the "Government") has explicitly stated that greenhouses are not considered "farms" under the *Employment Standards Code*, RSA 2000, c E-9 (the "Code").

The Government's declaration creates some confusion. The *Code* does not seem to state the exclusion of greenhouse operations from exemptions. In fact, the Employment Standards Technical Working Group's Recommendations Report to the Government recommended that greenhouses should have all the same standards and exemptions as the rest of agriculture. Although the recommendation may suggest greenhouses were previously excluded, the Alberta Labour Relations Board's Procedure Guide on Farm and Ranch Employee Exclusions continues to give the example that tomatoes grown in a hot-house fall within the exemption. Nonetheless, it would appear farm workers working in greenhouses in Alberta will not be considered farm workers under the *Code*.

If greenhouses are not considered "farms", overtime becomes an important consideration in addition to the expenses mentioned above (minimum wage, general holiday pay and vacation pay). Overtime is also an important consideration amid reports that the agricultural industry already faces a labour shortage due to processing delays with the Temporary Foreign Workers program. With fewer workers, existing workers would likely need to work more hours and employers will have to carry overtime expenses for the same amount of work that was done pre-labour shortage.

This is a major difference compared to British Columbia and Ontario. Not only are employees working in agricultural operations in greenhouses in those provinces considered farm workers, cannabis growers are also considered farm workers.

In Ontario, *MedReleaf Corp. v. UFCW*, 272 C.L.R.B.R. (2d) 1, dealt with different legislation and issues, but it did consider cannabis to be an agricultural commodity, and that the employees at the medical marijuana operation were "in agriculture", thus falling under the protection of the *Agricultural Employees Protection Act*, 2002.

In British Columbia, *MedReleaf* was argued as support that employees at a medical marijuana facility should be considered "farm workers". The British Columbia Employment Standards Tribunal in *Suncoast Health Corp., Re*, found the employee to be a farm worker. The decision was later varied because the employee's duties, construction work and security, did not consist of agricultural duties. However, the Director did continue to suggest that the facility could be an agricultural operation.

Ultimately, not only do Alberta's farm employers shoulder more entitlements than their counterparts in British Columbia and Ontario, cannabis growers in Alberta shoulder even more, because they are not considered a farm operation. With the change in minimum wage in Alberta, the legalization of cannabis in October 2018 and several major cannabis production facilities being built in Alberta, it will be interesting to see whether any legislative changes will be made in response. The Government did leave the door open by stating it will continue to consult with the industry to determine if special rules are required.

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Michelle Lane

Leadership Effectiveness Coach and Facilitator, Vibrant Leaders

ASK the Expert

Become Better Leaders

Follow these five principles

Q: What should we be doing to develop as more effective leaders?

A: Spend some time observing the most effective leaders and you'll start to notice some recurring themes. Whether it's their ways of being, or certain things they do well and do often, the most effective leaders always stand out from the crowd. Not surprisingly, so does their impact. Look closely and you will see some of their personal leadership principles in action — principles that define who they are and influence the ways they think, act and lead.

In my work with leaders who want to be better or evolve some aspect of their organization's leadership culture, a few core leadership principles and practices stand out. The good news is that each of these can be developed and mastered by anyone who wants to strengthen their effectiveness as a leader. Here are five principles that frequently rise to the top:

1. Purpose Drives the Most Effective Leaders:

At the core, the most effective leaders have developed a **deep, enduring commitment to their leadership purpose, vision and values**. These are the leaders who know (and demonstrate) their purpose as a leader and help others see theirs too. They have spent time and energy getting clear about who they are as a leader and what matters to them. Their leadership reflects it. These leaders inspire others with their deep sense of purpose. They also cultivate common purpose within the teams and organizations they lead. The result? Better alignment, greater effectiveness and higher performance by all.

2. Effective Leaders are Fully Present:

The most effective leaders have developed their **capacity and commitment to being present**. They are fully present to themselves and each moment of their leadership; they are also present to others. Fully present leaders pay attention to the impact their leadership has on those around them and the larger world in which they lead. They appreciate fully that leaders set the tone and create the conditions for success in the teams and organizations they lead.

3. People are the Focus of the Most Effective Leaders:

Effective leaders define the success of others as one of the most important measures of their leadership. **For many, enabling the success of others is WHY they lead**. These leaders devote time and energy to developing others and make a consistent practice of supporting, encouraging and celebrating their personal and professional development. In the process, they grow more leaders.

4. Effective Leaders are Open:

Being welcome, curious and fully open are also hallmarks of effective leadership. You'll see it in the ease and comfort with which they open themselves to diverse people, dissenting points of view and alternate ways of moving forward. They lead with curiosity and a willingness to learn and adapt. They encourage and invite the same for others. Correspondingly, they are comfortable with failure on the path to learning and growth. For effective leaders, doing what's right — however imperfectly — is more important than being right or doing it perfectly.

5. Effective Leaders are Fully Accountable:

When it comes right down to it, **effective leaders are accountable — on all fronts**. They take ownership for themselves and their impact; that's a given. Even more importantly, they take ownership for creating the conditions for individual, team and organizational success as well as its missteps. They are quick to acknowledge their own mistakes and make amends. They also readily take accountability when failure occurs.

These five core principles provide a powerful, enabling foundation. If you're keen to work on your leadership effectiveness, consider each of those areas for yourself:

1. Are you leading with purpose?
2. Are you being fully present?
3. Are you putting people first?
4. Are you being open?
5. Are you being fully accountable in all aspects of your leadership?

I encourage you to pick the principle that speaks most powerfully to you right now and commit to deepening your practice of it for the next few months. When you do, you'll be making a solid contribution to your effectiveness as a leader.

Michelle Lane is a leadership effectiveness coach and consultant with more than 35 years of diverse leadership experience in the public, private and non-profit sectors. Michelle can be reached at mlane@vibrantleaders.ca.



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Review Your Termination Clauses to Avoid Further Payouts

Use clear language regarding entitlement to common law

One of the most important things an employer can do to protect themselves from additional financial obligations in the event of termination liability when an employment relationship goes sour is to have a clear and enforceable termination clause in the employment contract. A recent decision from the Ontario Superior Court highlights the importance of clear termination clauses and is a lesson to employers in doing so.

In *Movati Athletic (Group) Inc. v Bergeron*, 2018 ONSC 7258, the Ontario Superior Court upheld the decision of a motion judge granting summary judgment in favour of an employee who had been terminated without cause. The employee, Catherine Bergeron, was employed by Movati Athletic Inc. (“Movati”) as a General Manager of one of its fitness centres for almost a year and a half when she was terminated without cause.

The employment contract governing the employment relationship contained the following termination clause:

Movati Athletic Inc. may terminate your employment without cause at any time during the term of your employment upon providing you with notice or pay in lieu of notice, and severance, if applicable, pursuant to the *Employment Standards Act, 2000* and subject to the continuation of your group benefits coverage, if applicable, for the minimum period required by the *Employment Standards Act, 2000*, as amended from time to time.

There was no issue of enforceability of the contract, as Ms. Bergeron had reviewed the

contract and been provided with an opportunity to obtain legal advice prior to signing. Furthermore, the termination clause complied with the Ontario *Employment Standards Act*.

Ms. Bergeron was provided with pay in lieu of notice, outstanding vacation pay and her continued group benefit coverage in accordance with the Ontario *Employment Standards Act*.

Ms. Bergeron brought an action against Movati for wrongful dismissal, followed by a motion for summary judgment seeking common law reasonable notice on the basis that the termination clause did not rebut the presumption of entitlement to common law reasonable notice.

The motion judge sided with Ms. Bergeron and found that Movati couldn’t rely on the termination clause to contract out of its obligations under the common law. In coming to this conclusion, the motion judge found that the clause was ambiguous and did not clearly limit Ms. Bergeron’s entitlements to the minimum provided in the *Employment Standards Act*, and thus the interpretation of the contract should be resolved in favour of Ms. Bergeron. In her decision, the motion judge also considered the language of the termination clause applicable to Ms. Bergeron when she was employed by Movati as a probationary employee.

Movati appealed the decision of the motion judge, arguing that the clause was sufficiently clear to limit Ms. Bergeron’s entitlement to common law reasonable notice. The reviewing judge determined that the question before the motion judge was whether the contract

clearly specified some period of notice, which met or exceeded the minimum legislative requirements so as to rebut the presumption that reasonable notice in accordance with the common law applies.

In reviewing the decision of the motion judge, the reviewing judge made the following findings:

1. The use of “pursuant to the ESA” may be interpreted to mean the notice period complies with the ESA, but it does not clearly indicate that the common law no longer applies;
2. The termination clause that applied to Ms. Bergeron when she was a probationary indicated that payment upon termination would be only for the minimum notice necessary to comply with the ESA. The difference in the language of the 2 clauses reflected a difference in the intention of the drafter; and
3. The termination clause in question could be interpreted as the minimum period required by the ESA applying to both the notice provision and the group benefit coverage, or the group benefit coverage only, making it ambiguous and should be interpreted in favour of Ms. Bergeron.

The reviewing judge also found that although Ms. Bergeron’s subjective opinion that she wasn’t aware of the implications of the clause was considered by the motion’s judge, it did not overwhelm her reasoning. Ultimately, the decision of the motion judge in favour of the employee was upheld.

continued next page...

Feature

Termination Clauses

... concluded from page 6

The above-noted language is commonly used and often thought of as sufficient to contract out of notice obligations at common law. This decision put this language under the microscope and shed light on just how clear a termination clause must be in order to provide adequate protection to employers.

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Feature

Investigating an Employee's Digital Activity

What HR needs to know

You've been asked to review the digital activity of an employee. Your employer has some concerns and wants you to investigate. With the amount of enterprise-level technology and controls that most companies now have, shouldn't that be fairly straightforward? Not always. While the tools and methods used to perform digital investigations are usually well defined, there are some 'grey areas' around what you should and should not be looking at and why that matters.

Here are our top 5 things to consider before starting any internal investigation into an employee's digital activity.

1. Ensure you have authority to proceed

While the employer might suspect some kind of foul play such as intellectual property theft and asks you to investigate an employee's digital footprints, it's important that you understand what's permissible before you do anything. Just because the staff member was using a company asset, this does not always translate to an open opportunity to review everything they've been doing.

Before you begin, get a formal request from the organization in writing. This should define the scope and give you appropriate authority. Make sure it has the appropriate sign-off from management and keep all communication relative to the request and the investigation itself. It may be beneficial to have your legal department or counsel involved or at least informed from the start, as the matter could end up in court or a tribunal and you'll need to prove everything you did and why.

2. Check corporate policies

Review your company policies to determine what an employee is allowed to do (and more importantly, not do). Establish if there is content which relates to activity monitoring or reviews. Where possible, confirm that employees, and specifically any which are in scope for your investigation, are aware of these policies. The security department of your organization may have a list of those who has gone through awareness training, while your HR department would typically have a list of staff who have signed off on policy compliance. Ideally, you need to confirm that the employee has read the policies, had awareness training and signed off on their understanding.

If no policies actually exist or there is no requirement for employees to read them, then it can be argued that they were allowed to do anything with the corporate systems since no restrictions have been imposed.

3. Determine compliance requirements

Depending on what business your company is in, you may find that they're obligated to comply with a standard or framework that may either a) limit your ability to directly review activity, or b) put your company's compliance status at risk should you proceed. A number of these frameworks are security focused, so a discussion with your information security teams may provide some useful insights. If your company has a risk and/or compliance function (or similar), they may be able to highlight any areas of concern.

Check to make sure that what you're looking to do is achievable. Also, check to see if the role of the employee may require them to have privileged access to highly confidential data (such as payment card numbers, personally identifiable information or financial data) and that your review does not compromise the organization's good standing.

If your company holds federally classified data, find out exactly to what the employee had authorized access. If it's above your own clearance level, you may need to call in someone with appropriate clearance to handle the data. While you may not be looking to review any of the data itself, just you having a copy of it or access to the system that holds it may cause an issue.

4. Focus the scope of the investigation

Many times we're asked to find 'anything of relevance'. That should never be readily agreed to without first knowing the facts. Let's say that a staff member is leaving the company and it's believed they had stolen confidential intellectual property. Using digital forensic methods and tools, it can often be determined what they did and how they did it. Network and system logs will show general activity. An in-depth forensic review of the systems and devices that the employee used could provide a very granular view of what they did. While this is great news for most investigations, there can be some challenges. If you were to start looking at everything that was done, your review

continued next page...

Investigating Digital Activity

... concluded from page 8

could take weeks or months. It could also take you down a path that has nothing at all to do with the original request.

The investigation should be focused. There should be rationale for what you're doing and the evidence you are looking for should be well defined. Using the above example of intellectual property theft, you ideally want a listing of what data the employee is suspected of removing, during what time period, if the data is vast and just considered a 'type' (such as "spreadsheets"), what common terms, phrases or language could it contain. Knowing all of this will speed up the investigation, help your legal counsel be comfortable in knowing that you weren't going on a 'witch hunt' (which can be a common argument by the defense in legal proceedings). This will let you get to the relevant facts more efficiently. If you receive an investigation request and you're uncomfortable or feel that the scope is too broad, you should collaborate with your management to gently educate them as to why a defined scope is needed.

That being said, with many fraud and other investigations,

evidence can point to areas that may be beyond your original scope. In situations such as these, it is important to communicate your findings and return to step 1.

5. Check privacy laws and legislations

Depending on your location, you may have to consider various privacy laws and legislations before starting any employee investigation. Legislation is usually relevant to the location in which the work is being performed. For example, if you're being asked to review user activity for someone operating from a regional office in Germany, the fact you are based at head office in Toronto does not mean that Canadian privacy law will necessarily apply. In that example, the German Bundesdatenschutzgesetz (BDSG) has very strict guidelines as to what can and can't be done with employee data contained on work systems (including the transferring of any data outside of national borders). It's always best to check with your legal counsel and compliance department before conducting any investigation on employee data. Not

doing so may jeopardize the validity of your findings.

There may be other factors to consider depending on your organization and the type of investigation that you are conducting. Always remember that any investigation that you conduct on an employee may result in legal action and potentially litigation. You may have to testify in court as to the actions that you took so it is imperative that you document everything you do and communicate your actions with other stakeholders involved.

Once you have considered all of the above and you're reasonably sure of compliance, then we suggest that you contact a digital forensic company for the investigation. In situations such as this, retaining a third party is highly recommended.

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Feature

Not So Fast: Legislative Developments to Ontario's Employment Landscape

2019 brings more changes and some deja vu for Ontario employers

2018 was full of legislative developments to the employment landscape in Ontario. Then, just when we thought we were ready to take on the New Year, the Ontario government struck again.

A series of Bills in December brought a slew of even more legislative changes, some of which effectively reversed or revised the changes that had either just come into effect in 2018, or were about to take effect in early 2019.

Confused? It's been hard to keep track, so we thought we would give you the highlights on the latest set of changes which, in some cases, actually means no change at all.

The Employment Standards Act: Out with the New and in with the Old!

As many of you will recall, the Wynne government passed Bill 148 in November 2017, which introduced a number of changes in 2018 and set the course for additional changes in 2019. Key changes included an increase in minimum wage and vacation entitlements, personal emergency leave and equal pay rules.

In the midst of these changes came an election defeat and Bill 47 was tabled by the new Ford government. Bill 47, which passed in December 2018 has a significant impact on some of the key changes made with Bill 148, including:

- Minimum wage will now remain at \$14.00 until at least October 2020, when any further increases will be tied to inflation.
- Personal Emergency Leave, which was established by Bill 148 and consisted of 10 days, 2 of which were to be paid,

has been repealed and replaced with a package of eight unpaid annual leave days as follows:

- Three unpaid days for personal sick leave;
- Two unpaid bereavement days; and
- Three unpaid days for "family responsibilities"

We expect this addition will help alleviate some of the confusion employers felt when administering Personal Emergency Days.

- Under Bill 148, employers were not allowed to request medical notes for Personal Emergency Leave. Not anymore! Employers are once again permitted to request a medical note from a qualified health practitioner to establish an employee's entitlement to sick leave and family responsibility leave.
- Bill 148 introduced equal pay for equal work on the basis of employment status (i.e. part-time versus full-time, or temporary versus permanent). Bill 47 eliminates this. However, the requirement for equal pay for equal work on the basis of sex remains the same as it was before Bill 148.

The Countdown to Pay Transparency has stalled... for now.

On April 26, 2018, Ontario became the first province in Canada to pass legislation aimed at increasing transparency in hiring and compensation.

A number of new obligations under the *Pay Transparency Act, 2018*, were supposed to be phased in starting on January 1, 2019. Key requirements included:

- Employers must include a salary rate or range on all publicly advertised job postings;
- Employers with more than 100 employees (or otherwise, as prescribed) must prepare and submit an annual Pay Transparency Report to the Ministry of Labour;
- Employers are prohibited from seeking information regarding past compensation history from a candidate, either directly or through an agent;
- Reprisals are prohibited against employees who inquire about compensation, disclose their compensation, and/or provide information with respect to their employer's compliance with the legislation.

As employers across the province were preparing for impact, the implementation of the *Pay Transparency Act, 2018* was paused indefinitely in December thanks to Bill 57. The date of commencement is now delayed from January 1, 2019 to a day to be named by proclamation of the Lieutenant Governor. Of note, Bill 57 has not altered any of the requirements which will eventually be expected of employers.

In addition to these most recent changes in the legislation, more appear to be on the way and are currently working their way through the legislative process. Be sure to stay tuned!

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Helen Robert
Associate,
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Compensation: Align the Program with Your Philosophy

Look after your most valued investment

While compensation is always recognized as a key element of talent management, surprisingly few organizations take a strategic approach to developing and administering a compensation program that truly supports the recruitment, retention and engagement of the best possible talent. If compensation is not properly managed, it can quickly become a driving force behind diminished productivity and ultimately employee turnover.

Compensation is often implemented in a fragmented, reactive way. I often hear “We need a bonus plan” or “we need a pension plan”. By taking a step back and looking at compensation in a holistic way, you can develop a simple philosophy that can in turn guide the development and administration of all of the different aspects of compensation.

Once a philosophy is in place to guide decision making and communicate the approach, the design of a practical and cost-effective compensation program that also responds to the supply and demand pressures of the talent market falls into place much more effectively.

Unless you are in a capital-intensive business, employee compensation is likely eating up at least 70% of your operating budget. It's quite simply your single biggest expense.

Consciously leveraging this expense to work as an investment helps make sure that the organization achieves the most value from their people.

Some elements like base pay, vacation and health benefits are generally expected to be at a certain level based on industry norms, but there is often an

opportunity to be more flexible and creative with other compensation elements.

Also, it is most important to review your compensation program regularly to ensure it stays current. Keep an eye on what your competitors are offering and stay on top of new trends. Just because you thought you had the best plan in your industry ten years ago doesn't mean that it still outranks the rest today.

Developing your compensation philosophy

A compensation philosophy is an overarching statement about how your organization views and manages compensation. The philosophy helps management, employees and candidates to understand the organization's approach and to trust in the fairness of the process. A well-defined compensation philosophy will guide the development and administration of all compensation programs while offering flexibility to respond to changing business priorities and economic environments. It will also guide consistent decision making, particularly in times of growth when individual pay decisions become less centralized.

To articulate your compensation philosophy, management must consider these strategic questions:

- How the competitive skills market is defined: Where is your staff coming from? Where do they go when they leave your organization?
- How the external skills market influences pay decisions and how the skills market is defined: What types of organizations are relevant?

- Which geographic regions are relevant?
- How internal equity influences decisions (how people are paid in relation to each other within the organization).
- How competitive does the organization plan to be? Will it compete at the high end or low end of the pay spectrum or somewhere in between? Will this differ by job family?
- Generally, what factors will affect decisions on pay management? (The financial condition of the organization, difficulty recruiting certain skills, which salary surveys to use, etc.)
- Will there be structured salary ranges?
- How will individual pay decisions be made? (i.e. based on performance, seniority, time to replace, a combination, etc.)

Aligning your compensation programs with your philosophy

Keeping your compensation philosophy at top of mind makes tangible decisions about structure and administration easier:

- Decide what compensation elements to include:
 - ▶ What's most important to the people you are trying to attract or retain? (e.g., your strongest performers, specialized talent)
 - ▶ What are the costs involved?
 - ▶ What fits with your philosophy? This helps you to understand where management, the board or other stakeholders will be most supportive.

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Feature

Compensation

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We immediately think of salary and bonus, but consider other rewards as well. Depending on the demographics, some elements may be more or less important. For example:

- Vacation allotments
- Health and dental benefits
- Insurances
- Retirement benefits
- Stock options
- Flexible work arrangements
- Other innovative offerings (health & fitness memberships, in-house employee recreation and fitness programs, sporting events, etc.)

Based on your philosophy...

- Do a market analysis to understand the competitive pay and bonus levels in your defined skills market. Assess

your current position and identify exposures. To obtain relevant data, participate in the same surveys as relevant comparator organizations.

- Assess talent in similar roles against each other internally and validate any differences in pay.
- Conduct similar research with respect to other rewards elements. For example, knowing that companies provide dental care is not enough. It's important to understand exactly what is covered and to what degree.

You need to understand what sort of coverage is generally provided — 80%? 90%? Is major work covered?

These are just a few key steps in developing a strategic approach to compensation — evolving it from your biggest expense to your most valued investment!

Helen Robert is a Total Rewards Coach and Associate with BenchMarket. She can be reached via email at helen@benchmarket.ca.

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The Duty to Investigate

Employer action is superior to employer inaction

In an era of increasing workplace complaints and incidents of harassment, the question facing many employers is, do I have a duty to investigate such complaints and incidents? The short answer is yes. An employer's duty to investigate can be found in various employment statutes, the common law and the employer's own policies and procedures.

The first thing that comes to mind for most when discussing workplace investigations is harassment, violence and bullying. It is true that workplace harassment, violence and bullying investigations have increased over the last little while, especially in light of the #MeToo movement and the surge in media attention to harassment or sexual harassment. It is also important for employers to be aware that they may have a duty to investigate other workplace issues such as misconduct, health and safety incidents and a breach of policy.

Let's explore an employer's duty to investigate most workplace incidents and provide guidance to employers grappling with the issue of whether or not to conduct a workplace investigation.

Harassment, Violence & Bullying

The duty to investigate harassment in the workplace stems from the legal requirements as set out in section 32.0.7 of the *Occupational Health and Safety Act*. Section 32.0.7 of the OHS Act came into force in September 2016 when Bill 132 was passed by the Ontario government. The legislation, as it relates to the duty to investigate, mandates employers to investigate all incidents and complaints of workplace harassment. It also provides

Ministry inspectors with the right to order an employer to retain an impartial third-party investigator to conduct an investigation into the workplace harassment incident or complaint. The legislation also requires employers to conduct investigations into harassment incidents and complaints in a timely manner.

As a note of caution, while Bill 132 imposed a duty on employers to investigate incidents and complaints of workplace harassment, the term incident is not defined in the legislation or the *Ministry of Labour's Code of Practice* to address workplace harassment. As a practical tip, when the employer or supervisor is aware of an occurrence of harassment or potential harassment, it is good practice for employers to conduct an investigation into the incident in question.

Conducting the investigation will prevent the employer from condoning harassing behaviour if it is true and from having the issue of harassment continue or get worse in the workplace if it does exist. As good practice, employers should remember that employer action is superior to employer inaction and condonation.

Similarly, the duty to investigate violence and bullying in the workplace stems from the legal requirements as set out in sections 25(2)(h) and 32.0.5 of the OHS Act. The legislation outlines that employers must take "every precaution reasonable" to protect the worker, thus imposing the duty to investigate incidents of violence and bullying on employers in order to address and stop the violence or bullying that is occurring in the workplace.

Human Rights Code Complaints

The *Human Rights Code* in many provinces does not place an explicit duty on employers to investigate complaints relating to discrimination. However, each province's human rights code mandates employers to provide employees with an environment free from discrimination. For example, in Ontario, section 5 of the *Human Rights Code* states that all individuals must be free from discrimination in employment based on the enumerated grounds listed in the *Code*. The free from discrimination provision in the *Code* is in effect telling employers that investigating discrimination complaints is a means by which employers can ensure they are providing employees with a workplace free from discrimination. Thus, employers have a duty to investigate human rights complaints.

Other (Mis)Conduct

Generally, under provincial and federal health and safety legislation, employers have a duty to investigate incidents or accidents in the workplace and/or notify their labour ministry, depending on the severity of the accident or incident.

Furthermore, workplaces with joint health and safety committees have additional duties relating to the investigation of an incident or accident.

With respect to other workplace incidents such as employee misconduct or breaches to the employer's policies and procedures, many employers can find their duty to investigate the incident and the process by which the incident must be investigated as outlined in their own policies and procedures.

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Gail Boone
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ASK the Expert

Support Employees Grieving the Loss of a Pet

Q: What can employers do to assist employees grieving the loss of a pet?

A: Supporting employees through times of grief can be very difficult. When the grief comes as the result of losing a pet, managers can play an important role in supporting the employee through a time of tremendous loss. Employees who feel supported generally have more positive feelings about their manager, team, workplace and work than those who do not.

Grief is a normal human reaction to loss. The loss can come in many forms. While we experience similar stages of grief (denial, anger, bargaining, depression and acceptance), the expression of each grief experience is unique to the individual.

Pets have a significant place in their owners' lives. Pet owners have abundant love for and genuine relationships with their pets. In some cases, the pet is the only family the employee has. Their passing leaves a tremendous gap and a need for coping strategies as one comes to terms with the loss.

So, what's the best way to support the grieving employee?

Know the company policy for bereavement. If there's time before you meet with the grieving employee, learn the company policy for bereavement for pets including time off, access to Employee and Family Assistance Programs (EFAP) and other supports. If you hear about the loss before understanding what support can be provided, tell the employee you will find out what's available right away and get back to them quickly.

Acknowledge the loss. Simply acknowledging the loss in a way that conveys genuine caring and compassion is a good place to start. "I am so sorry this has happened," or "I know how much she or he meant to you. I am sorry," will go a long way. It does not have to be complicated or profound. People just want to know that you can appreciate how difficult the loss is for them.

Refrain from language that minimizes the loss. It might be hard to understand the depth of grief for a lost pet. Sometimes in an effort to help, people offer well intended statements that fall horribly short of the mark. Stay away from phrases such as "Well you can always get another one," or anything that begins with "At least." Also avoid comparisons with personal situations of grief — the story of when it happened to you. It is important to refrain from talk about how they will "get over it." Loss is something one learns to live with. Acceptance is about the final realization that their loved one is gone and learning to establish the way forward without their presence.

Work with employees to help them understand how to best support their teammate. Not everyone likes or owns animals. For some, it's difficult to understand the magnitude of grief they see from a colleague who has suffered the loss of a pet. Host a conversation either one on one or with the team minus the grieving pet owner to talk about the grieving process and strategies to best support their colleague. Set the example of caring, compassion and care for their well-being.

Ask what they need from you and the team right now. Understand they might not know the answer to this

question especially if the loss is recent. Presenting the question shows consideration and provides the employee with the opportunity to ask you or team mates for help. A prior conversation with team mates about how to share the load until the employee feels ready to fully step into their workload helps ensure work gets done. A grieving employee might need the work as a distraction, however having a plan in case they need support is important. It also helps other employees feel like they are making a meaningful contribution.

Make space for the grieving process. Know the grieving process will take time. It is not linear. There will be good days, bad days, highs and lows. Just because an employee has a good day does not mean they have moved through the stages of grieving and into acceptance. The intensity of the grief will vary with time as well. Many things such as anniversaries, special events and stories can trigger grief. Expect it anytime.

Offer time off. While not all workplaces can offer time paid time off, finding a way to enable an employee to take some time can be very helpful especially right after the loss. Don't ask the employee to take 'vacation time' to deal with losing of a pet. Doing so is a sure way to generate feelings of resentment and instill a sense of lack of caring.

Check in. While there's no need to be explicit about why you are checking in, do so from time to time. Ask the employee about selfcare and strategies to make sure they are eating, getting enough rest and exercise. If they have a friend at work, encourage the friend to

continued next page...

Thawing the 'Frozen Middle'

... concluded from page 2

they speak badly of their superiors, these remarks make them look bad. Also, no matter how careful they are, those comments will find their way back to the senior executives. It is just as important to show those who report to them the respect they deserve as workers and contributors to the organization's success. These employees will work harder for their middle manager and that information will drift up to the senior execs as well. Good middle managers recognize that the people they pass on the way up may be the same people they may pass on the way down.

It's time to stop thinking of middle management as blockers to progress. Employers should harness their energy to lead to help their organizations grow.

Nathaly Pinchuk is Executive Director of IPM [Institute of Professional Management].

Duty to Investigate

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Practical Tips

While employers have a duty to investigate most incidents in the workplace, employers must be cautious when conducting investigations. The employer must ensure that the investigator is impartial, thorough and preserves the integrity of the investigation and the investigation process. Furthermore, jurisprudence also suggests that employers have a duty to conduct an adequate and proper investigation when conducting workplace investigations.

Otherwise, the employer may be found liable for breaching the employer's duty of good faith.

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Loss of a Pet

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be available if the employee needs a listening ear. Help the employee understand you have a concern for their overall well-being.

Proving the much-needed support after the loss of a pet helps the employee to find their new normal. It will take time. Managers and colleagues who can come alongside to provide quiet and meaningful support send a message of the value of people over productivity. That message won't be forgotten.

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