



Ideas and Information for Human Resources Professionals

EMPLOYEE RELATIONS

It's Not Negotiable

Do you know how to haggle? Some people delight in the prospect of obtaining a more favorable side to monetary negotiations. Others not only dread this thought, but will go to amazing lengths to avoid it. Whether you're a buyer, a seller, a hiring manager, or an interview candidate, you've probably had to play the tug-of-war game when it came to money. But all that may be changing in the name of fairness.

As a consumer, there are few places where one can still barter and even those are shrinking. Take, for example, car dealerships. It's assumed that the buyer and salesperson will wrangle for hours in order to get the best perceived deal. Now, however, many car sales locations are eliminating this practice -- and drawing plenty of customers who don't mind paying a fair price as long as they don't believe they're getting ripped off.



This "no haggle" policy is also being implemented during the hiring process. Salary negotiations are one of the most important aspects of any job. Your starting salary sets the tone for all future raises and compensation. As an applicant, you're elated when you find out you landed the position, but then may feel disappointed when the salary being offered doesn't meet your expectations.

An article on *Society for Human Resource Management's* (SHRM) website titled, "[The Viability of Banning Salary Negotiations](#)," discusses the benefit of ensuring fair pay while still attracting top talent. The article profiles Reddit, a well-known Internet/technology company based in Silicon Valley. Their hiring policy sets salaries based on competitive market rates for each position. And according to a spokesperson for Reddit, the company has seen an uptick in candidates (who specifically cite this policy) seeking to work at the company. A positive side effect is that banning salary negotiations may lead to better salary equality among employees regardless of race or gender. It's believed that women and minorities are usually



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EMPLOYER WEBINAR

**Common Knowledge:
Determining Who Is a
Common Law Employee**

offered lower salaries, and by starting a particular position within the company at the same pay rate it would eliminate that gap.

The article raises a serious problem when it comes to salary negotiations as these discussions can sometimes be seen as a negative toward employer/employee relations. For example, another company in the article discusses how these negotiations, before someone is even hired, establishes an “us versus them” attitude. Furthermore, it sets a tone of distrust and dishonesty. If a company offers a candidate a low salary, but would be willing to pay more, then they are essentially saying that they think the candidate is worth X amount, but is going to offer Y amount just to see if they accept it. On the flipside, a candidate who throws out a ridiculously high number, knowing that you often have to start high to get what you want, yet then settles for something much less is basically starting their working relationship with a lie.

TECHNOLOGY

Proprietary & Confidential

You know what they say about people who assume. When it comes to a company's intellectual property, never assume anything. Just because you think something is proprietary and confidential doesn't mean that it is, or that someone else will feel the same way you do. That's why it's a good idea to always err on the side of caution and make sure any documents that are part of a company's intellectual property are labeled as such, password protected if necessary, and mentioned in the employee handbook as such. This may not keep them from getting stolen, but it will help a company should it need to file suit.

On *Society for Human Resource Management*, an article titled, [Identify Your Trade Secrets to Prevail in IP Theft Litigation](#), lists a case where information was taken and used by a former employee because it wasn't properly labeled as proprietary and confidential. Furthermore, it wasn't identified in the employee

handbook as a trade secret, nor was the employee required to sign a noncompete agreement. The issue at hand was a list of people, including their names, addresses, phone numbers, etc., held by the company. An employee took that list and used it for a competing business. The argument was that everyone within the company understood that the list was only for business purposes and was not publicly known, nor available to the public. The court, however, disagreed and ruled that the list was not a trade secret or confidential and proprietary information. The list was available to all staff and to the people on the list, so the company wasn't trying to guard the secrecy of the information. Furthermore, most of the information was available in the public domain.

So, what is the lesson here for employers? Regardless of what the information may be, what technologies it may contain, or who has access to it, make sure everyone knows that it's part of the company's



and Counting Them under the Affordable Care Act

Tuesday, October 13, 2015
2:00 p.m. ET / 11:00 a.m. PT

The Patient Protection and Affordable Care Act (ACA) requires employers to determine who their common law employees are and include them in their headcount to determine their applicable large employer (ALE) status. Sometimes determining an employee's status as a common law employee can be difficult. This webinar will discuss best practices for determining common law employee status and how employers determine if they are an ALE.

This webinar will:

- Explain what a common law employee is
- Discuss best practices for determining if an employee is a common law employee, including union employees and seasonal workers
- Provide information on who is specifically excluded as a common law employee, including independent contractors
- Discuss the Department of Labor's new guidance on independent contractor classification
- Discuss leased employees, temporary agency employees, and professional employer organization arrangements
- Discuss employees who are working overseas, foreign workers, and workers on visas
- Provide information on the process for determining how many full time and full time equivalent employees an employer has
- Discuss how veterans with

intellectual property and put in place safeguards that ensure this.

What kinds of safeguards are necessary? According to the article, as long as a company takes reasonable precautions by taking time to set up a system to protect information believed to be important, confidential, or proprietary, the system doesn't have to be perfect.

So by limiting access to the information, keeping it secure, informing everyone who has access that the information is confidential, and designating the information as such in the employee handbook. It's also a good idea, according to the article, to remind departing employees during their exit interview about any confidentiality obligations.

If something is worth protecting, then it's worth the extra time and effort needed to ensure its security. Proprietary and confidential mean just that, and these terms should be taken seriously and not applied haphazardly.

WELLNESS

Dirty Devices

When we think of things that are dirty (real items, not someone's mind), public restrooms immediately jump to the top of the list. Yet, in the grand scheme of things, there are items far dirtier and you probably handle them on a daily basis. You don't need to be famous germophobes Howard Hughes or Howie Mandel to be concerned about this, but you should still be concerned.

According to an article on *Forbes* titled, [5 Gadgets With More Germs Than Your Toilet Seat](#), some of our everyday items carry thousands more bacteria per square inch than a public toilet. If that's not gross, then I don't know what is. So, let's start with that most horrible of germey objects – the toilet.

The average one in your home has between 50 and 300 bacteria per square inch. The average public toilet bumps that up to more than 1,000 per square inch. But if you think that's bad, you ain't seen nothin' yet!

Since the advent of the smartphone, people have carried them everywhere they go. We put them in our pockets or purses, on car seats, we place them on restaurant tables, we handle them without washing our hands, and of course, we take them into the bathroom with us. And despite all this, we hold them right up to our face next to our ears, eyes, nose, and mouth. Yuck! In that same *Forbes* article, a study in 2012 had smartphones carrying 10 times more bacteria than most toilet seats and a 2013 study had that much higher at a staggering 25,107 bacteria per square inch. But before you go and disinfect your phone, you shouldn't ignore these other havens for germs.



veteran health care are counted in the total ALE headcount

- Review the rules an ALE must follow when designing common law employees' waiting period or orientation period

This 90-minute basic to intermediate webinar will help employers understand how to determine which employees are common law employees and determine the employer's size.

Registration for this webinar will be available soon! Please regularly check the [UBA website](#) for details when this becomes available or contact your local [UBA Partner Firm](#). The presentation slides will be posted on the [UBA website](#) the day before the webinar.

About the Presenter

[Randall M. Limbeck](#) is a Shareholder in the Omaha, Nebraska, office of Jackson Lewis P.C. He has spent more than 25 years specializing in representation of clients in the areas of ERISA, employee benefits, and executive compensation.

Mr. Limbeck has represented clients in a broad range of industries and size, including food processing, health care, government, technology, manufacturing, agribusiness, information services, banking and professional practices. Mr. Limbeck's employee benefits and executive compensation clients include large, publicly traded companies and well known private companies, and a wide range of professional service organizations.

Mr. Limbeck's practice involves design, document drafting, employee communications, litigation and assisting clients in dealings with the IRS and Department of Labor.

Certification

This webinar event has been

Tablets, e-readers, and other similar devices are just like a smartphone, only with a lot more surface area to catch all those nasty bacteria. Not too far down from those are keyboards. You know, the device with tiny keys that we put our fingers on after eating messy food or touching sticky things. If you have children, then you probably have a game controller in your home. Again, think about what your kids touch, and then consider how often they wash their hands. Yeah, all that gets put on the game controller along with thousands of bacteria. But adults don't get a free pass at home either. That remote control near the TV – the one that gets stuck between couch cushions, dropped on the floor, and then handled with sticky fingers – is the perfect breeding ground for germs.

If you're not freaking out right now, then you're probably asking what you can do to clean up these devices and keep them clean. The first step is to never, ever under any circumstances take these into the bathroom. The next step is to wash your hands (or use a hand sanitizer) before handling these devices. And finally, clean these devices on a regular basis using gadget-friendly wipes.

submitted to the [Human Resource Certification Institute](#) to qualify for 1.5 recertification credit hours.

IN BRIEF

Having a Rude 'Tude Is Contagious

Smile and the world smiles with you, but what happens when someone you work with is rude? In a *CNN* article titled, [Study: Workplace rudeness is like a virus](#), the author says that everyone is usually worried about catching a cold at work, yet they should be more concerned about catching a co-worker's rudeness.

The article references a study from the University of Florida where they found that people who rated someone they worked with as rude were often thought to be rude themselves by a co-worker. What's particularly troubling about the research is that it appears we have no control over how we react to rudeness. Our bodies react via an "automatic cognitive mechanism," which means that it's happening within the subconscious part of our brain.

Whether a person is the recipient of an insult, is intentionally not included in an activity, or has had information withheld from them, the rudeness leaves a solid impression that can affect how that person perceives future experiences. An example of this would be if you received an insult in the company lunchroom (e.g., you drink too much coffee), then just by entering the room later will trigger a response in you that may make you rude to someone else who has absolutely nothing to do with the original insult.

In the study referenced in the article, 98% of workers experienced rudeness at work and 50% said they experienced rudeness at least every week. While there isn't much you can do

about the automatic response to your subconscious, what you can do is make a conscious effort not to be rude, regardless of what is said or done to you. It's also important to note how you say something to a co-worker and to be as clear in your message as possible. For example, saying "nice shoes" can be taken as a compliment or taken as sarcasm. It's better to say, "those shoes are beautiful" so that it's clear you mean to really compliment what the person is wearing.

By breaking the chain of rudeness, it can create a more positive work environment and potentially a better experience at work for your co-workers. Leave the rude attitude at home, or better yet, just don't be rude at all.

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