

CPAAC

County Personnel Administrators Association of California



Risky Business

September 28-30, 2016
Wine & Roses
Conference Center
Lodi, CA

CPAAC Board

Michael Stock
President

Lisa Garret
Vice-President

Michael McDougall
Treasurer

Marc Fox
Secretary

Tami Douglas-Shatz
Immediate
Past President



CPAAC Fall Conference 2016

AGENDA: Wednesday, September 28, 2016

Continued

Regional Connection Break Out Sessions and Roundtable

I. Planned Topics

- a. _____
- b. _____
- c. _____

Regions:

- Bay Area:
 - San Mateo, Santa Cruz, Santa Clara, Alameda, Contra Costa, Solano, Napa, Sonoma, Marin, San Francisco, Monterey
- North Counties:
 - Lake, Colusa, Butte, Plumas, Lassen, Tehama, Mendocino, Glenn, Shasta, Trinity, Humboldt, Del Norte, Siskiyou, Modoc, Sierra
- Central Area:
 - Sacramento, San Joaquin, Stanislaus, Calaveras, Amador, El Dorado, Placer, Nevada, Sutter, Yuba, Yolo, Alpine
- South Central:
 - San Benito, Merced, Mariposa, Tuolumne, Madera, Kings, Fresno, Tulare, Kern
- South:
 - San Bernardino, Riverside, San Diego, Imperial, Mono, Inyo, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange

- 3:00 p.m. **Handling Leaves and Managing Risk**
Presenter: Jonathan Fraser Light, Esq. - LightGabler
- 4:30 p.m. **Roundtable**
- 4:55 p.m. **Parking Lot & Action Item Recap**
- 5:00 p.m. **Adjourn**
- 5:15 p.m. **Optional Wine Tasting & Appetizers**
Lower Garden Ballroom Patio
Hosted by Liebert Cassidy Whitmore
- 6:00 p.m. **No Host Dinner**



CPAAC Fall Conference 2016

AGENDA: Thursday, September 29, 2016

Garden Ballroom

- 7:00 a.m. **Breakfast**
- 8:00 a.m. **Approval of Spring 2016 Meeting Minutes and Treasurer's Report and Roundtable**
- 9:00 a.m. **Flores v. City of San Gabriel: What Your Agency Needs to Know**
Presenter: Lisa Charbonneau, Esq., Liebert Cassidy Whitmore
- 10:00 a.m. **Break**
- 10:15 a.m. **Roundtable – Discussion Topics**
- 10:45 a.m. **IBM – Analytics and Building Out a Data Program**
Presenter: Victor J. Reyes, Associate Partner, Talent & Engagement
- 12:00 p.m. **Lunch with Faith Conley**
Legislative Update: CSAC Government Affairs
- 1:00 p.m. **Trends in Litigation and Litigation Update**
Presenter: Michael Pott, JD - Chief Claims Officer - CSAC EIA
Presenter: Carl Fessenden, Esq. – Shareholder
- 2:15 p.m. **Break**
- 2:30 p.m. **Lessons Learned from the Terrorist Attack in San Bernardino County:**
Presenters: Lori Goldman, Human Resources Benefits Chief, San Bernardino County
 Suzie Soren, Human Resources Officer II, San Bernardino County
- 5:00 p.m. **Adjourn**
- 6:30 p.m. **Host Dinner**
Cellar Room
Sponsored by Renee Sloan Holtzman Sakai LLP



CPAAC Fall Conference 2016

AGENDA: Friday, September 30, 2016

Garden Ballroom

- | | |
|------------|---|
| 7:00 a.m. | Breakfast |
| 8:30 a.m. | KPMG Metrics
Presenter - Ken Miller, KPMG – Director, Advisory People & Change |
| 9:30 a.m. | Break / Checkout |
| 9:45 a.m. | Transgender Issues
Presenter – Gage Dungy, Esq., Liebert Cassidy Whitmore |
| 10:45 a.m. | Proposition 64 – Marijuana in the Workplace: What Can We Anticipate?
Presenter - Gage Dungy, Esq. |
| 11:30 a.m. | Adjourn |

CPAAC Conference Meeting Minutes – Spring 2016

Location: Wine & Roses; 2505 W. Turner Road; Lodi, CA.

Attendees: Alameda, Amador, Butte, Colusa, El Dorado, Glenn, Lake, Los Angeles, Marin, Mariposa, Mendocino, Napa, Nevada, Orange, Placer, Riverside, Sacramento, San Benito, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Shasta, Solano, Sonoma, Sutter, Tulare, Tuolumne, and Yuba. **A quorum of the membership was present** (Article V, Qualifications and Rights of Membership, section H, Quorum). Retirees present were Georgia Cochran, Bill May, and Don Turko.

Wednesday, March 23, 2016

2:00 p.m. Call to Order and Welcoming Comments

President Michael Stock (Riverside) welcomed all participants to the Spring 2016 conference. He also thanked Past President Tami Douglas-Schatz (San Luis Obispo) for her service and contributions last year as CPAAC President. President Stock thanked Executive Assistant Abi Martin (Riverside) and Director of Human Resources Donna Vaillancourt (San Mateo) for their efforts in securing the conference center, making all conference arrangements, and compiling the conference binders. President Stock reminded participants to make available any bargaining update sheets and provided his roundtable discussion.

Moved by Lisa Garrett (Los Angeles) and **second** by Tami Douglas-Schatz (San Luis Obispo) **to approve the agenda**. The motion passed unanimously.

Officer Reports

Vice President Lisa Garrett (Los Angeles) welcomed new members. Treasurer Michael McDougall (Santa Cruz) asked that counties review the Treasurer's report (which will be considered for approval tomorrow), the balance as of March 11, 2016 was \$48,517, and asked participants to review if their county's dues are current. Secretary Marc Fox (Solano) distributed a roster, asking each participant to validate the accuracy of the roster. Past President Tami Douglas-Schatz (San Luis Obispo) did not have an officer's report.

2:15 p.m. Recognition of New Members

President Stock welcomed new members and asked that they identify themselves so the whole group could welcome each person.

CPAAC Committee Reports

- Committee – Sponsor Opportunities – President Stock mentioned that CPAAC is always looking for sponsors to assist with conference activities and asked that if a participant had an idea for sponsorship to forward the idea to either himself or to another Board member.
- CPAAC Senior Advisors – No report.

- Regional Mentors – President Stock identified that the Board merged the South East and South West regions into one region (South). Current mentors are Brian Ring (Butte) for North, Christina Cramer (Sonoma) for Bay Area, and Tami Douglas-Schatz (San Luis Obispo) and Mike Stock (Riverside) for South. There presently is not a mentor for Central Area or South Central, and President Stock asked these regions to identify their mentor.
- Unemployment Compensation Master Agreement Vendor(s) TALX Committee Report – Mikki Callahan (San Francisco) identified that the unemployment insurance third-party administrator contract with TALX had been extended for a short duration, that the scope of services for a renewed contract were nearly complete, and that the TALX renewed contract was expected to be completed within one month.

Regional Connection Break-Out Sessions and Roundtable

Participants met based on their regions to discuss matters of regional interest. The regions are:

- **North Counties** – Butte, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, Trinity
- **Central Area** – Alpine, Amador, Calaveras, El Dorado, Nevada, Placer, Sacramento, San Joaquin, Stanislaus, Sutter, Yuba, Yolo
- **Bay Area** – Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Monterey,
- **South Central** – Fresno, Kern, Kings, Madera, Merced, Mariposa, San Benito, Tulare, Tuolumne
- **South** – Imperial, Inyo, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Ventura

The hot topics for discussion included:

- Recruitment of difficult to recruit positions and the use of private sector sourcing companies
- “Soft skills” assessments and how and when to use them
- Use of private sector comparisons in classification and compensation studies
- Use of post-offer, pre-appointment medical exams for semi-sedentary positions
- Alternatives to State Mediation and Conciliation Services for union elections
- Retiree health insurance

Break

3:30 p.m. Executive Recruitments

Executive Vice President Robert Burg, Ralph Andersen & Associates, presented on successful steps to be better prepared in the screening and reviewing of job applicants.

4:30 p.m. Roundtable, Parking Lot and Action Item Recap

Participants gave brief updates highlighting key initiatives, challenges, and/or requesting resources. There were no parking lot or action items.

5:00 p.m. Recess to Thursday, March 24

Thursday, March 24, 2016

8:30 a.m. Approval of Minutes and Treasurer's Report; Roundtable

Moved by Charlie Wilson (Nevada) and **second** by Kathy Ferguson (Lake) **to approve the Treasurer's report of September 3, 2015 to March 11, 2016.** The motion passed unanimously.

Moved by Patty Leland (Sutter) and **second** by Heather Ruiz (Napa) **to approve the September 2015 meeting minutes.** The motion passed unanimously.

Participants gave brief updates highlighting key initiatives, challenges, and/or requesting resources.

President Stock announced that the next meeting will be held on **September 28 – September 30, 2016 held at Wine & Roses in Lodi.**

Break

9:15 a.m. Emotional Intelligence and the Brain

Riverside County's Director of Leadership and Organizational Development Nancy Taylor and Principal Human Resources Analyst Shondi Lee presented on emotional intelligence. Included in the presentation was the review of the EQ In-Action Profile (Learning in action Technologies), defining emotional intelligence (EQ) and its important, how EQ develops, the brain-mind-and relationships, the first four years of life and attachment theories, and how to retain our brain.

12:00 noon Lunch

12:15 p.m. Presentation on Agency Shop and the First Amendment

Attorney Kelly Tuffo of Liebert Cassidy Whitmore presented on public sector agency shop arrangements and constitutional First Amendment protections, leading to the U.S. Supreme Court case of Friedrichs v. California Teachers Association.

Break

1:30 p.m. Employment Law Update

Partner Jack Hughes of Liebert Cassidy Whitmore presented on recent National Labor Relations Board (NLRB) decisions, court decisions, and legislative and other changes impacting public sector employment.

3:15 p.m. Roundtable

Participants gave brief updates highlighting key initiatives, challenges, and/or requesting resources.

3:30 p.m. Workplace Drug Policies: Dealing with Prescription Medications and Medical Marijuana

Renne Sloan Holtzman Sakai's Senior Counsel Burke Dunphy and Partner Steven Shaw presented on how to craft and enforce effective workplace drug and alcohol policies, avoiding common pitfalls and overboard restrictions on prescription medications, and addressing medical marijuana in and out of the workplace.

4:40 p.m. Roundtable, Parking Lot and Action Item Recap

Participants gave brief updates highlighting key initiatives, challenges, and/or requesting resources. There were no parking lot or action items.

5:00 p.m. Recess to Friday, March 25

Friday, March 25, 2016

8:30 a.m. Legislative Update

CSAC Legislative Representative Faith Conley presented on the activities of the current legislative session.

Break

9:45 a.m. Analytics, Metrics and Predictive Analytics

Scott Pollak, Principal and Co-Leader of Saratogo, People Analytics, PricewaterhouseCoopers presented the use of analytics to maximize performance. Included in the presentation was trends in people analytics, starting with metrics and benchmarking, human resources dashboards, and predictive modelling.

11:30 a.m. Roundtable, Parking Lot and Action Items

None.

11:30 a.m. Adjournment

The conference adjourned at 11:30 a.m.



**COUNTY PERSONNEL ADMINISTRATORS
Association of California**

**TREASURER'S REPORT SUMMARY
March 11, 2016 to August 31, 2016**

Summary: March 11, 2016 to August 31, 2016

	Debits	Credit	Balance
CHASE-Checking Acct. Balance Forward at March 11, 2016			48,517.07
Net Activity: March 11, 2016 to August 31, 2016	21,231.82	28,300.00	
Ending Balance on March 11, 2016			55,585.25

FY 2016-17 Dues Summary:

FY 2016-17 Dues Invoiced	39,400.00
Total FY 2016-17 Dues received as of 08/31/16	26,550.00
Total FY 2015-16 Dues not paid as of 08/31/16	6,550.00

FY 2016-17 Dues Receivable Outstanding as of 08/31/2016

Alameda	800.00
Calaveras	600.00
Del Norte	600.00
El Dorado	650.00
Fresno	750.00
Humboldt	650.00
Imperial	650.00
Inyo	600.00
Kern	750.00
Lassen	600.00
Mariposa	600.00
Merced	650.00
Mono	600.00
Monterey	750.00
Orange	900.00
San Bernardino	800.00
Santa Clara	800.00
Sierra	600.00
Tehama	600.00
Total Dues Receivable as of 08/31/2016	12,950.00



**COUNTY PERSONNEL ADMINISTRATORS
Association of California**

**TREASURER'S REPORT SUMMARY
March 11, 2016 to August 31, 2016**

	Debits	Credits	Balance
Checking Account Balance on Checking Account Balance on March 11, 2016			48,517.07
Net Activity: March 11, 2016 to August 31, 2016	(21,321.82)	28,300.00	
Ending Balance on August 31, 2016		Total	55,585.25

Debits

Summary:

3/29/16	Michael Stock (Reimb. for Spring CPAAC 2016 Conf.)	379.22		
3/30/16	Wine & Roses (Spring 2016 Conf. Final balance)	13,038.39		
4/12/16	Wine and Roses - CPAAC Fall 2016 Deposit	2,484.00		
4/12/16	CSAC Institute (CSAC Spring Course Program 2016)	3,270.00		
5/5/16	County of San Mateo (Reimb. for Binders Spring CPAAC 2016 Conf.)	2,060.21		
	Subtotal	21,231.82		

Credits

Summary:

FY 2015/16 Dues		1,350.00		
FY 2016/17 Dues		26,550.00		
Conference Registrations		400.00		
	Subtotal	28,300.00		

Misc Credit

Detail:

Registrations

Bill May Registration (Fall 2015 Conf.)		200.00		
County of Mendocino Registration (Spring 2016 CPAAC Conf.)		200.00		
	Subtotal	400.00		

FY 2016-17 Dues Summary:

County	Dues Paid	Dues Outstanding
Alameda		800.00
Alpine	600.00	-
Amador	600.00	-
Butte	800.00	-
Calaveras		600.00
Colusa	600.00	-
Contra Costa	750.00	50.00
Del Norte		600.00
El Dorado		650.00
Fresno		750.00
Glenn	600.00	-



TREASURER'S REPORT SUMMARY
March 11, 2016 to August 31, 2016

<i>Continued: Dues Summary</i>	Dues Paid	Dues Outstanding
Humboldt		650.00
Imperial		650.00
Inyo		600.00
Kern		750.00
Kings	650.00	-
Lake	600.00	-
Lassen		600.00
Los Angeles	900.00	-
Madera	650.00	-
Marin	650.00	-
Mariposa		600.00
Mendocino	600.00	-
Merced		650.00
Modoc	600.00	-
Mono		600.00
Monterey		750.00
Napa	650.00	-
Nevada	600.00	-
Orange		900.00
Placer	650.00	-
Plumas	600.00	-
Riverside	800.00	-
Sacramento	800.00	-
San Benito	600.00	-
San Bernardino		800.00
San Diego	900.00	-
San Francisco	750.00	-
San Joaquin	750.00	-
San Luis Obispo	650.00	-
San Mateo	750.00	-
Santa Barbara	750.00	-
Santa Clara		800.00
Santa Cruz	650.00	-
Shasta	650.00	-
Sierra		600.00
Siskiyou	600.00	-
Solano	750.00	-
Sonoma	750.00	-
Stanislaus	750.00	-
Sutter	600.00	-
Tehama		600.00
Trinity	600.00	-



TREASURER'S REPORT SUMMARY
March 11, 2016 to August 31, 2016

<i>Continued: Dues Summary</i>	Dues Paid	Dues Outstanding
Tulare	750.00	-
Tuolumne	600.00	-
Ventura	750.00	-
Yolo	650.00	-
Yuba	600.00	-
Subtotals	26,550.00	13,000.00

Respectfully Submitted,

Michael J. McDougall
CPAAC Treasurer



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COUNTY PERSONNEL ADMINISTRATORS ASSOCIATION OF CALIFORNIA (CPAAC)

Flores v. City of San Gabriel: What Your Agency Needs to Know

9/29/2016

PRESENTED BY:

Lisa S. Charbonneau

Flores v. City of San Gabriel: What Your Agency Needs to Know

County Personnel Administrators Association of California (CPAAC) Fall Conference | September 29, 2016

Presented by: Lisa S. Charbonneau

LCW LIEBERT CASSIDY WHITMORE

**Flores v. City of San Gabriel:
What Your Agency
Needs to Know**

County Personnel Administrators Association
of California (CPAAC) Fall Conference |
September 29, 2016

Presented By: Lisa S. Charbonneau



Agenda

1. The *Flores* decision
2. Background on cash in lieu programs.
3. The primary holdings from *Flores* and impacts on employers
4. The status of the appeal process
5. Next steps for your agency

2 LCW LIEBERT CASSIDY WHITMORE

Background: *Flores v. City of San Gabriel*

- In 2012, a handful of police officers filed suit against their employer, the City of San Gabriel, for violations of the Fair Labor Standards Act (FLSA).
 - The officers alleged the City failed to correctly calculate their overtime rate and thus they were owed overtime.
 - Specifically, the officers argued the City was not treating its cash payments in lieu of health benefits in accordance with the FLSA.
 - The case was brought as a collective action.
- Both parties appealed the district court's rulings. The Ninth Circuit decision was issued June 2, 2016.

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Flores v. City of San Gabriel: What Your Agency Needs to Know

County Personnel Administrators Association of California (CPAAC) Fall Conference | September 29, 2016

Presented by: Lisa S. Charbonneau

Flores Holdings re: Cash in Lieu Payments

- **ONE:** Cash payments made to employees in lieu of health benefits cannot be excluded from the FLSA regular rate of pay used to pay FLSA overtime to non-exempt employees.
- **TWO:** If the total amount of cash paid in lieu of health benefits is more than 40% of the benefits plan payments as a whole, the plan is not “bona fide”. If a plan is not bona fide, all cash contributions paid by the employer to the plan, in addition to cash in lieu, must be included in the regular rate.

(Flores v. City of San Gabriel (9th Cir. 2016) 824 F. 3d 890.)

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What is “Cash In Lieu?”

- Many agencies offer cash-back options as part of a “Section 125 Plan,” which requires agencies to provide a taxable cash-back option for unused plan distributions. The unused allowance taken in taxable income is referred to here as “cash in lieu”.
 - Sec. 125 plans offer tax-sheltered employer allowances, which is a benefit to employees.
 - CalPERS medical participants may use Sec. 125 plans to mitigate equal contribution payments required by PEMHCA.
- Agencies also offer cash “opt-out” payments to employees who are otherwise covered, e.g. under a spouse’s plan.
 - Opt-out payments are cash incentives for employees to secure coverage under other plans.

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Typical Cash In Lieu / Opt Out Language

The City has implemented a Section 125-qualifying Cafeteria Plan. The City shall contribute \$1300 per month to the Plan per employee. The City contracts with CalPERS for medical insurance. The \$1300 includes the PEMHCA minimum contribution. Employees may use their Cafeteria Plan contributions toward the City’s medical, dental, and vision programs.

Any unused Cafeteria Plan allowance shall be payable to the employee as taxable cash back. Employees may opt-out of the medical plan by providing evidence of alternative medical insurance coverage. Employees who opt-out of City-provided medical coverage are eligible to receive a maximum allowance of \$1150 per month.

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Flores v. City of San Gabriel: What Your Agency Needs to Know

County Personnel Administrators Association of California (CPAAC) Fall Conference | September 29, 2016

Presented by: Lisa S. Charbonneau

LCW LIEBERT CASSIDY WHITMORE

FLORES: REGULAR RATE IMPACTS

Background: The Regular Rate

Basic Overtime Pay Calculation

- Chris earns \$20/hour and works 44 hours in his 40-hour/7-day work period.
- How much is Chris owed for the week?
 $\$20.00 = \text{hourly base rate}/44 \text{ hours worked}$

40 x \$20.00 =	\$800.00
4 x \$20 x 1.5 =	<u>\$120.00</u>
	\$920.00

Background: Regular Rate of Pay Calculation

Chris is also paid \$80 per week in bilingual pay.

- Multiply total hours worked times base: $44 \times \$20 = \880.00
- Add \$80 bilingual pay for the week: $\$880 + \$80 = \$960.00$
- Calculate the regular rate by dividing total amount earned by total hours worked: $\$960/44 \text{ hours} = \21.81

FLSA Regular Rate of Pay = \$21.81

Note: For employees paid on a salary basis, the regular rate calculation may be different. The method of calculation should be evaluated prior to implementation.

Flores v. City of San Gabriel: What Your Agency Needs to Know

County Personnel Administrators Association of California (CPAAC) Fall Conference | September 29, 2016

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Impact of Flores

Chris also opts-out of medical coverage under the agency's Section 125 Flexible Benefit Plan and receives \$800/month in Cash in Lieu

- To calculate Chris' regular rate of pay, determine the workweek equivalent of the monthly cash in lieu payments:
 - Cash in lieu = \$800/month
 - Multiply \$800 x 12 months in the year, then divide by 52 (weeks)
 - $(\$800 * 12) / 52 = \$184.62/\text{week}$

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Regular Rate of Pay Calculation with Cash In Lieu

Chris is paid \$80 per week in bilingual pay. Chris' hourly rate is \$20.00 and 44 hours were worked during the workweek.

The workweek equivalent of Cash in Lieu (CIL) is \$184.62.

1. Multiply total hours worked times base: $44 \times \$20 = \880.00
2. Add \$80 bilingual pay for the week: $\$880 + \$80 = \$960.00$
3. Add CIL workweek equivalent: $\$960 + \$184.62 = \$1144.62$
4. Calculate the regular rate by dividing total amount earned by total hours worked: $\$1,144.62 / 44 \text{ hours} = \26.01

FLSA Regular Rate of Pay = \$26.01

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LCW LIEBERT CASSIDY WHITMORE

IS THE PLAN BONA FIDE PER FLORES?

Flores v. City of San Gabriel: What Your Agency Needs to Know

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Definition of a Bona Fide Plan

- General Rule under FLSA: Payments to a benefits plan are excluded from the regular rate only if the plan is “bona fide”.
 - A “bona fide” plan must not give employees the option to receive any part of the employer’s contributions in cash, unless the amount of cash is “incidental”.
 - Where a plan is not bona fide, all payments to the plan must be included in the regular rate, in addition to cash in lieu payments.
- **Per Flores: If total cash in lieu payments are greater than 40% of the total plan payments, the payments are more than “incidental” and the plan is not “bona fide”.**
 - This means all payments to the plan must be included in the regular rate.

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Are the Cash Payouts “Incidental” per Flores?

- What is “incidental”?
 - The Ninth Circuit said little about the definition of “incidental” except that the City’s payments, which were 42-46% of the City’s total plan payments, were not incidental.
 - We recommend assuming that cash payments over 40% of the total are more than incidental, based on the Flores decision.
 - Even if your cash payments are less than 40%, your plan may still be at risk under Flores.
 - Evaluate each plan on a case-by-case basis.

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The Bona Fide / Incidental Analysis

- Step 1: Identify the plan and all plan participants.
- Step 2: Identify *total* plan payments.
 - Total plan payments = cash in lieu payments + payments employer made to the plan to cover premiums.
- Step 3: Calculate cash in lieu payments as a percentage of the total plan payments.
- Step 4: What is the percentage? Is it over 40%? If less than 40%, how close to 40%?

The analysis is plan-wide, i.e. in the aggregate, not employee-by-employee.

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Flores v. City of San Gabriel: What Your Agency Needs to Know

County Personnel Administrators Association of California (CPAAC) Fall Conference | September 29, 2016

Presented by: Lisa S. Charbonneau

Example Bona Fide / Incidental Analysis

- City has 350 employees and four bargaining groups. City participates in the CalPERS medical program governed by PEMHCA.
- All employees are provided an allowance under a Section 125 Cafeteria plan of up to \$1300 per month to purchase medical, dental, and vision coverage.
- If an employee provides alternate proof of medical coverage, the employee can opt out of medical and receive \$1150.

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Example Bona Fide / Incidental Analysis: Relevant Data

Enrollment Level	# of EE's	Employer Paid Medical Premiums	Employer Paid Dental & Vision Premiums	Employer Paid Opt Out Payments	Employee Paid Premiums for all 3 plans
EE Only	40	\$22,406	\$2,082	\$0	\$0
EE + 1	64	\$76,468	\$4,732	\$0	\$10,477
Family	136	\$176,800	\$0	\$0	\$20,601
Opt Out	110	\$0	\$6,364*	\$126,500	\$0
Total	350	\$275,674	\$13,178	\$126,500	\$31,078

*Employees could only opt out of medical, so the Agency still paid vision/dental for opt-outs.

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Example Bona Fide / Incidental Analysis, Cont.

- Step 1: Identify the plan and who is covered.
 - All 350 employees are covered by the City's Sec. 125 plan.
- Step 2: Identify total plan payments.
 - \$275,674 + \$13,178 + \$126,500 = \$415,352
 - Employee contributions are excluded from this analysis.
- Step 3: Calculate cash in lieu as a % of the total.
 - $\$126,500 / \$415,352 = 0.3045$
- Step 4: What is the percentage?
 - Cash in lieu is 31% of the total plan payments.

Is 31% incidental?

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Flores v. City of San Gabriel: What Your Agency Needs to Know

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LCW LIEBERT CASSIDY WHITMORE

OTHER KEY ISSUES

Flores' Third Holding: Willfulness

- FLSA violations have a two-year statute of limitations unless the employer's violation was "willful".
- If willful, a **three-year statute** of limitations applies.
 - We advise agencies to take and document specific FLSA compliance efforts, such as reliance on DOL administrator letters or advice from legal counsel, to avoid a finding of willfulness.
- Violators can be penalized with **liquidated damages**.
 - Liquidated damages = amount owed in back wages.
- Prevailing employees are also entitled to reasonable **attorney's fees** from the losing defendant.

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Status of Appeal Process

- The City filed a Petition for Rehearing *en banc* with the Ninth Circuit in June 2016.
- The Ninth Circuit denied the Petition on August 23, 2016.
- The City will seek review by the U.S. Supreme Court.
 - The deadline is November 2016.
- What do you do in the meantime?

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Flores v. City of San Gabriel: What Your Agency Needs to Know

County Personnel Administrators Association of California (CPAAC) Fall Conference | September 29, 2016

Presented by: Lisa S. Charbonneau

Next Steps for Your Agency

1. Focus preliminary efforts on coming into compliance going forward.
 - Evaluate whether your plan is bona fide.
 - Ensure your regular rate calculation is correct.
 - Take advantage of FLSA concepts such as offsets and work periods to minimize overtime liability prior to incorporating cash in lieu into your regular rate.
2. Consider updating your payroll system to separately calculate your MOU overtime obligations and your FLSA obligations every pay period / work period.
3. After getting into compliance, begin to evaluate possible back liability.

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Other Issues to Consider

- **Should you make changes to your CIL program?**
 - CIL is a mandatory subject of bargaining.
 - May have Section 125, ACA, PEMHCA, other impacts.
- **How to respond to inquiries re: Flores.**
 - Lawsuits have been filed – some not served.
 - Should you sign a tolling agreement?
 - Union reps may want to negotiate Flores-impacts, but you may not need to bargain how you implement Flores to come into compliance with the FLSA.
- **Is it ever appropriate NOT to take any action?**

Consult legal counsel re: any of the above.

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Thank You

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TRENDS IN LITIGATION AND LITIGATION UPDATE

MAY 18, 2016
PRESENTER S:
MICHAEL POTT
CARL FESSENDEN

CSAC EXCESS INSURANCE AUTHORITY

Trends in Litigation and Litigation Update

PAGE 2

AGENDA



- Litigation Trends – Employment Law
- Litigation Trends – Other Subjects
- Legal Update – Notable employment cases from the past year

INTRODUCTIONS



- **Michael Pott, CSAC EIA, Chief Claims Officer**
- **Carl Fessenden, Porter Scott**

**** Litigation Trends – Employment Law

PAGE 3



Retaliation

Equal Pay Act

Law Enforcement Claims



**** Retaliation

PAGE 4

California Fair Employment and Housing Act

- Many protected classes
- Jurors think they know what retaliation is



**** Retaliation – Labor Code Section 1102.5

PAGE 5

Amended Definition of Protected Activity – Employee Can Disclose Information to:

- Government or law enforcement agency
- A person with authority over the employee
- A person who has authority to investigate, discover, or correct the violation

Prohibited Retaliation

- Cannot retaliate for disclosing information or because the employer believes the employee disclosed or may disclose information.



**** Equal Pay Act

PAGE 6



Equal Pay Act – Key changes

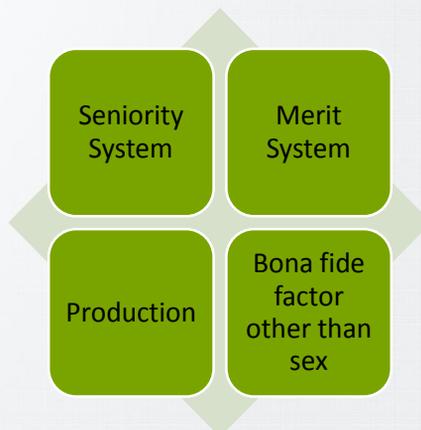
PAGE 7

- **Equal pay for equal work changed to equal pay for “substantially similar” work.**
 - **It does not need to be the same job.**
 - **Instead consider “a composite of skill, effort and responsibility”**



Equal Pay Act - Exceptions

PAGE 8



Law Enforcement Claims



- **Body and Dash Cameras**
- **Proper Mental Health Care for Inmates**
- **Excessive Force Claims brought by Unarmed Persons**
- **Interactions with Persons with Mental Health Issues**
- **HR Issues Resulting from Claims Against Officers**

Litigation Trends – Other Subjects



Legal Update

Associational Disability Discrimination – *Castro v. Dependable Highway Express, Inc.* 246 Cal.App.4th 180 (2016)

PAGE 11

FACTS

- **Castro-Ramirez (P) was employed by Dependable Highway Express (D).**
- **P had good performance evaluations and no employment issues.**
- **P's son required daily dialysis, which P had to administer.**
- **D accommodated P for a number of years.**
- **P's ability to work varied, depending on his son's condition and the amount of time he needed to be connected to the dialysis machine.**
- **In March 2013, P received a new supervisor who was made aware of P's scheduling needs.**
- **In March 2013, P complained that his supervisor had changed his hours and that he was unable to tend to his son.**
- **Supervisor was informed of the complaint.**



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Legal Update

Associational Disability Discrimination – *Castro v. Dependable Highway Express, Inc.* 246 Cal.App.4th 180 (2016)

PAGE 12

FACTS

- **In April 2013, one of D's customers requested that P do its deliveries at 7am, which is the way it had always been done. When P asked supervisor about deliveries to this customer, the supervisor lied and said the customer did not like P's work and did not want P to make deliveries.**
- **On April 22, P's supervisor assigned P a late shift (11:55am – 9pm). P completed the shift and was able to help his son.**
- **On April 23, the supervisor assigned P a shift that started at 12pm (w/ a lengthier route). P told his supervisor he could not complete the shift because he needed to tend to his son.**
- **Supervisor terminated P. On the day P was terminated, the supervisor scheduled eight other drivers to start shifts before noon.**



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**** Legal Update

Associational Disability Discrimination – *Castro v. Dependable Highway Express, Inc.* 246 Cal.App.4th 180 (2016)

PAGE 13

HOLDING

- On appeal, D argued that the FEHA is “clear” that employers do not need to accommodate associates of the disabled.
- The Court held: The FEHA creates a duty to provide reasonable accommodations to employees associated with disabled persons.



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**** Legal Update

Associational Disability Discrimination – *Castro v. Dependable Highway Express, Inc.* 246 Cal.App.4th 180 (2016)

PAGE 14

TAKEAWAYS

- **Recommendation: Engage in the interactive process when employees request accommodation, even when the accommodation is requested to care for another person’s disability.**
- **Crucial issue: How far does this extend? Family, friends, roommates, neighbors? No guidance as of yet.**



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Legal Update

Retaliation under 42 USC Section 1983 – *Stilwell v. City of Williams*, No. 14-15540, F.3d (9th Cir. Aug. 5, 2016)

PAGE 15

Facts

- **Stillwell (P) was the Superintendent of the Water Department**
- **P signed a sworn statement in support of the prior HR Director's lawsuit wherein she alleged she was terminated for complaining about age discrimination against another city employee.**
- **Assistant City Manager learned about this and began taking negative actions toward P.**
- **A few months later, P was terminated.**



Legal Update

Retaliation under 42 USC Section 1983 – *Stilwell v. City of Williams*, No. 14-15540, F.3d (9th Cir. Aug. 5, 2016)

PAGE 16

Holding

- **Defendant asserted that P's 42 USC Section 1983 First Amendment claim was barred because the retaliation provision of the ADEA precluded such a claim.**
- **Ninth Circuit found that the ADEA does not bar a retaliation claim under 42 USC Section 1983.**

Rationale

- **ADEA retaliation provision provides less protection than does the First Amendment so the Court felt that Congress did not intend to limit the protections available.**



**** Legal Update

Attorney-Client Privileged Investigations – *City of Petaluma v. Superior Court*, 2016 WL 3342543 (Cal. Ct. App. 2016)

PAGE 17

FACTS

- **Andrea Waters was a firefighter and paramedic for the City.**
- **She took a leave of absence from her job, filed a complaint with the EEOC asserting claims for harassment, discrimination, and retaliation, and then resigned.**
- **The City retained outside counsel to investigate the EEOC complaint and to assist in preparing to defend against a civil lawsuit.**
- **Waters sought to obtain a copy of the investigation during the discovery phase of her civil lawsuit.**
- **The City refused to produce the document asserting attorney-client privilege and the work product doctrine.**
- **The Superior Court ordered the document be produced.**



**** Legal Update

Attorney-Client Privileged Investigations – *City of Petaluma v. Superior Court*, 2016 WL 3342543 (Cal. Ct. App. 2016)

PAGE 18

Holding

- **Documents did not need to be produced to Waters because the dominant purpose of the investigation was to provide legal services to the employer in anticipation of litigation.**
- **Assertion of the avoidable consequences doctrine by the City did not constitute a waiver of the attorney-client privilege.**



Legal Update

Underpayment of Wages – *Flores v. City of San Gabriel*, 824 F.3d 890 (9th Cir. 2016)

PAGE 19

FACTS

- **City made cash payments to police officer employees in lieu of health benefits.**
- **Officers claimed that these cash payments should have been included in determining their “regular rate” that was used to compensate them for overtime they worked.**
- **City argued that the cash-in-lieu payments were not payments made as compensation for hours worked and were not tied to the amount of work an employee performed for the City.**



Legal Update

Underpayment of Wages – *Flores v. City of San Gabriel*, 824 F.3d 890 (9th Cir. 2016)

PAGE 20

Holding

- **The Ninth Circuit found that the payments were “compensation for work” and therefore should have been considered in determining the employee’s “regular rate” of pay for purposes of calculating the employee’s FLSA overtime rate.**



Legal Update

Defense and Indemnity– *Daza v. Los Angeles Community College Dist.* (2016) 247 Cal.App.4th 260

PAGE 21

FACTS

- **An adult student sued the District and a guidance counselor alleging that the counselor had sexually assaulted her.**
- **District refused to defend and indemnify the counselor stating that the alleged conduct was outside the course and scope of employment.**
- **District settled the student's lawsuit so no factual determinations were ever made regarding whether the alleged actions occurred or, if they did, whether they were in the course and scope of employment.**
- **Counselor then sued the District to recover the attorneys' fees he spent defending against the student's claims.**



Legal Update

Defense and Indemnity– *Daza v. Los Angeles Community College Dist.* (2016) 247 Cal.App.4th 260

PAGE 22

Holding

- **The determination as to whether an employee acted within the course and scope of employment is a factual one and is not limited to a third party's unproven allegations when the allegations are denied by the employee.**



Legal Update

Defense and Indemnity– *Chang v. County of Los Angeles* (2016)
1 Cal.App.5th 25

PAGE 23

FACTS

- **Three deputies were sued for assault and battery.**
- **The County provided a defense under a reservation of rights.**
- **At the conclusion of the civil trial, the jury found against the deputies and awarded punitive damages against them as well.**
- **The County declined to pay the judgment against the deputies.**
- **The deputies then sued the County over payment of the non-punitive damage awards that were assessed against them.**
- **The trial court ruled in favor of the deputies.**



Legal Update

Defense and Indemnity– *Chang v. County of Los Angeles* (2016) 1
Cal.App.5th 25

PAGE 24

Holding

- **The County's reservation of rights was sufficient as the employees acted with actual malice. Government Code Section 825.2 provides that an employee may recover for indemnification if the entity fails to establish the employee acted out of actual fraud, corruption, or actual malice.**



Legal Update

FEHA Regulations

PAGE 25

Effective April 1, 2016

Written harassment, discrimination, and retaliation prevention policy

Must list all protected categories

Prohibits conduct by coworkers, third parties, supervisors, and managers



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Legal Update

FEHA Regulations

PAGE 26

Create a confidential complaint process

- Provide a complaint mechanism that allows employees to report complaints to an individual or entity other than his or her immediate supervisor.

Translate the policy into every language that is spoken by at least 10 percent of its workforce.

- Make clear that employees shall not be exposed to retaliation for complaining.



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....
Questions

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Measuring the Value of the HR Function or "People are the Key"

Presented by: Ken Millen – KPMG LLP

Director, Advisory

People & Change Practice (State & Local Government)

Fall 2016 CPAAC Conference – September 30, 2016

The Overwhelmed Employee...



"It keeps me from looking at my phone every two seconds."

Agenda

- Ken Millen introduction
- Some background and context around our topic
- Importance of service levels measurements
- What should we be measuring?
- Some examples of service levels
- What about dashboards? Let's look at some examples
- Open discussion

Ken Millen

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Function and Specialization

Ken is a member of KPMG's State & Local Government Management Consulting Practice specializing in Organizational Assessments, HR Strategy Development and HR Service Delivery Strategy & Implementation

Education, Licenses & Certifications

- **BS in Industrial Management – Georgia Institute of Technology**
- **Executive Development Program – University of Michigan**
- **Executive Development Program – Harvard University**

Ken is a human resources and information systems executive with 50 plus years of experience in multiple industries working with start-up companies, growth firms and Fortune 100 corporations. He has deep practitioner experience (15 years as the global head of HR for a software company, 7 years as head of HR services for a Fortune 50 company) and extensive consulting experiences in both the public and private sector.

Representative Clients

MARTA	Architect of the Capitol
State of Maine	DC Government
Detroit Public Schools	United States Air Force
State of Utah	State of Florida
The Hershey Company	FBI
State of Texas	State of New York
Pennsylvania	Cuyahoga County
Riverside County	TSA



Agenda

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Challenges facing Human Resources (HR) Today

We need to reduce internal support costs and move budget dollars to critical county needs

The skills of our HR business partners and specialists need improvement.

We are still having trouble attracting millennials and younger workers.

How can we reduce our sick leave and overtime expenses?

Our performance and compensation processes are obsolete.

Our county has capability gaps in new technology areas across the organization.

How do we create more collaboration and knowledge sharing across the county?

We have inconsistencies in our classification and compensation practices.

We have an aging workforce that is not highly motivated.

How do we increase women and diversity in leadership?

How do we drive greater innovation into the organization?

We need to restructure HR to build common systems and reduce costs.

We need to get first line supervisors more engaged in people management

Our training organization is too expensive and not driving enough value.

We need better data and analytics in HR.

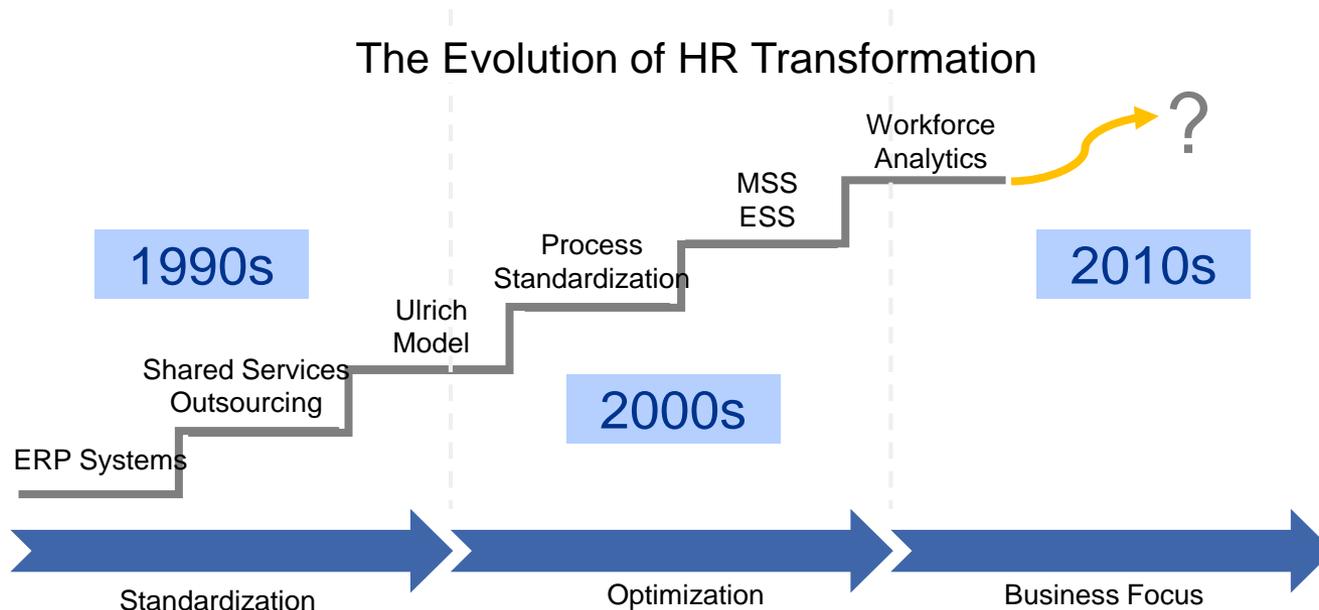
The Evolution of HR since the '90s

1st Generation HR

Focused on establishing and improving new HR service delivery models with strong emphasis on rationalizing infrastructure to deliver transactional HR services – utilizing core HR systems (e.g., ERP), standardized processes, and consistent organizational designs.

2nd Generation HR

Builds on 1st Generation foundation by improving the efficiency of service delivery, focusing on the effectiveness of strategic HR services that support the county operations, and measuring business performance targets.



Why Transform the HR Operating Model?

HR organizations that have transformed help drive organization results by:

- Spending the **majority of their time** and energy **on strategic activities** (workforce planning, talent development, innovative program design, etc.)
- Utilizing sophisticated, **robust technology** and **sourcing strategies** to optimize **efficiency** and **reduce risk**
- Providing high value and excellent service to its customers in all areas of HR and are **perceived positively by all constituent groups**
- Using **data driven decision making** to identify and track key metrics on a regular basis
- Responding **swiftly to emerging business needs** and trends in key metrics – **proactive** versus reactive decision making
- Having in place a **governance** structure to **strike the right balance between fostering business unit (agency/department) autonomy and centralizing/consolidating to leverage the broader organization size and scale**
- Seeking **continuous improvement** in both quantitative and qualitative terms (operational excellence and ROI)

What work goes where in the model?

Standardization/Efficiency defined service

Management involvement/Knowledge transfer

Specific Agency,
Department or
Location

- Site Specific Policy Development
- Site Specific Employee Relations
- Substance Abuse Testing

- HR Strategy
- Workforce Planning
- Talent Management
- Labor Relations
- Policy & Legal Compliance

'Strategic' Activities

'Transactional'
Activities

- Data Entry into HRIS
- Contact Center T0/T1
- Payroll and T&E Admin
- Learning Administration
- Reporting and Analytics
- Global Mobility Admin
- Pension Admin
- Compensation Admin
- Benefit Administration
- Recruiting Administration

- Organizational & Communications Development
- Compensation Design
- Benefits Design
- L&D Strategy and Content
- Succession Planning
- Performance Management
- Staffing Policy/Tools

'Consultative'
Activities

Organizations that have successfully transformed HR have done the following things...



62%

Of organizations focus on **involving** HR professionals in the design and implementation of the change.



54%

Of organizations have ensured **leadership ownership** in the implementation of the change.



65%

Of organizations who **failed** at their transformation **did not identify measures** for success.



96%

Integrated changes to HR process and roles when implementing technology.

Agenda

- Ken Millen introduction
- Some background and context around our topic
- **Importance of service levels measurements**
- What should we be measuring?
- Some examples of service levels
- What about dashboards? Let's look at some examples
- Open discussion

The Basis for Service Levels

- ❑ Service Levels should target (and align with) organizational strategy
- ❑ Service Levels are established to create a mutual expectation of the level and quality of services between the provider and the recipient
- ❑ Service Levels help ensure that the objectives / outcomes of the services are being met

Characteristics of an Effective Metric or Measure

- Focus on the most appropriate measure of success aligned with operating strategies
- Measure outcomes, not intermediate steps (i.e., focus on the 'outcome' and not how they 'got there')
- Often a measure of timeliness (within x hours), efficiency (y processed per day), or quality (error rate)
- Are simple and easy to manage / measure
- Are easy to 'trend' (to measure performance over time, not just a single incident)
- Are good indicators of the future
- Are completely objective and based on business needs (i.e., not emotions)
- Are a good balance of accuracy, auditability, complexity, and cost
- Are easy to understand AND verifiable

Agenda

- Ken Millen introduction
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Sample HR measures

- ✓ **Cost of HR, HR Ratios, etc. (but be careful....)**
- ✓ **% increase in the use of self service**
- ✓ **%accuracy of transactions**
- ✓ **% of inquiries answered in the first contact**
- ✓ **% of escalated cases handled w/in prescribed timeframes**
- ✓ **% of transactions in electronic form and available through self service**

Sample HR measures cont'd

- ✓ **% of critical positions filled within 30 days**
- ✓ **Turnover rate of high performers**
- ✓ **# of employees with an individual development plan**
- ✓ **# of classifications**
- ✓ **Equal career growth opportunities for managers and non managers**
- ✓ **# of requests for strategic HR consultation from customers**

Sample HR measures cont'd

- ✓ **% of employees who went through orientation within first two days on the job**
- ✓ **% of agencies or departments that have developed and implemented a strategic workforce plan**
- ✓ **Time to fill positions**
- ✓ **# of process improvements made as defined and validated by customers**
- ✓ **# of EE's who would recommend their employer to friends and family**

Sample HR measures cont'd

- ✓ **# of changes in labor contracts which result in increased flexibility**
- ✓ **# of changes made in labor contracts that result in a reduction of \$**
- ✓ **% of employees actively engaged in workplace wellness program**
- ✓ **% of employees on sick leave**
- ✓ **% of employees being paid overtime**

Leading Practices: Typical Shared Services Measures

- ✓ Volume (by any number of functional, geographic, transactional, or other categories)
- ✓ Age/Time (e.g., how long a case is open or average time to close)
- ✓ Accuracy (e.g., completed correctly or number of errors)
- ✓ Customer satisfaction
- ✓ Resource efficiency (e.g., number of cases per staff, number of cases per 1000 employees)
- ✓ Compliance (e.g., adherence to standard or regulation)
- ✓ Cost (e.g., per transaction, per headcount)

Agenda

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- **Some examples of service levels**
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Key Performance Indications

Leading Practice Service Levels-HR Functional

Level 2 Process	Level 3 Activity	Service Level Metric/Measurement	Metric Owner	Leading Practice Expected Service Level	Minimum Service Level	Measurement Window	Performance Indicator	Service Level Attribute	Source
Learning & Development	Technology Training Management	Content Design and Development: Defined as e-Learning content courseware's ability to function successfully with LMS infrastructure. Measured as the percentage of e-learning programs being deployed to production without reprogramming to correct functionality errors. The calculation is as follows: the number of e-learning courseware that need to be reprogrammed or fixed to correct functionality errors, divided by the number of e-learning courseware deployed.	HR-SSC/ Learning COE	99.00%	95.00%	Quarterly	Key	Effectiveness	HROA
Talent Recruit/ Onboarding	Applicant Administration	Recruiting Administration Timeliness: Calculated as the number of recruiting administration activities performed within agreed timeframes divided by the total number of recruiting administration activities performed during the measurement window. Sample recruiting admin activities include requisition posting, scheduling of assessment testing, mailing offer letter, candidate short list submission, interview scheduling, and delivery of new hire packets. Measures the timeliness of the recruiting administration function.	HR-SSC	95.00%	90.00%	Monthly	Critical	Timeliness	HROA
Talent Recruit/ Onboarding	Applicant Administration	Interview to Hire Ratio: Calculated as ratio of candidates interviewed by the hiring manager to those hired where the ratio is under 5:1. Measures the quality of the candidate slate submitted to targeted benchmark profile.	Talent Acquisition COE	95.00%	90.00%	Monthly	Critical	Effectiveness	HROA
Talent Recruit/ Onboarding	Applicant Administration	Time to Fill: Calculated as the average number of days from receipt of an approved requisition to the day of offer acceptance.	HR-SSC/ Talent Acquisition COE	95.00%	90.00%	Monthly	Critical	Timeliness	HROA

Key Performance Indications

Leading Practice Service Levels-HR Functional

Level 2 Process	Level 3 Activity	Service Level Metric/Measurement	Metric Owner	Leading Practice Expected Service Level	Minimum Service Level	Measurement Window	Performance Indicator	Service Level Attribute	Source
HR Consulting	Year End Calibration	Employee Retention: Calculated as the number of candidates hired who are still employed by company XX days (typical measures are 30, 60 and 90 days based on type of job and job level) after hire date divided by the total number of candidates hired. Measures the effectiveness of the recruiting function, defined as retention of employees beyond an agreed upon time frame (i.e., right candidate was hired for the right job).	Performance Management COE	99.00%	99.00%	Monthly	Key	Effectiveness	HROA
Talent Recruit/ Onboarding	Applicant Administration	Diversity of Candidate Slate: Calculated as the number of requisitions containing at least one candidate that meets the agreed diversity guidelines divided by the total number of requisitions. Measures the effectiveness of the recruiting function in adhering to diversity objectives.	Talent Acquisition COE	99.00%	99.00%	Monthly	Key	Effectiveness	HROA
HR Consulting	Year End Calibration	Quality of Hire: Calculated as the number of new hires receiving a satisfactory rating divided by total number of new hires. Measures the total number of new hires receiving a "satisfactory" rating by the hiring manager 90 days after date of hire.	Talent Acquisition COE	95.00%	90.00%	Monthly	Key	Effectiveness	HROA
Talent Recruit/ Onboarding	Applicant Administration	Requisitions Sourced: Calculated as the number of authorized requisitions sourced within the agreed upon timelines divided by the number of authorized requisitions sourced. Measures the responsiveness of the sourcing function. Identifies a time to source based on type of job. NOTE: Requires sufficient volume to be relevant.	Talent Acquisition COE	95.00%	90.00%	Monthly	Key	Timeliness	HROA

Key Performance Indications

Leading Practice Service Levels-HR Functional

Level 2 Process	Level 3 Activity	Service Level Metric/Measurement	Metric Owner	Leading Practice Expected Service Level	Minimum Service Level	Measurement Window	Performance Indicator	Service Level Attribute	Source
HR Reporting	Standard Reporting	BU Number of standard reports delivered or available per the agreed schedule divided by total number of standard reports scheduled for delivery in the measurement window. NOTE: This metric includes all scheduled reports including standard and custom reports.	HR-SSC	99.00%	97.00%	Monthly	Key	Timeliness	HROA
Employee/ Manager Inquiries	Employee/ Manager Inquiries	Cases Resolved within 5 Business Days of Receipt: Calculated as the number of cases resolved within 5 business days divided by the total number of cases opened for the period. A case must be opened for all inquiries that cannot be resolved in the first contact.	HR-SSC	96.00%	93.00%	Monthly	Critical	Timeliness	HROA
Employee/ Manager Inquiries	Employee/ Manager Inquiries	Cases Resolved within 20 Business Days of Being Opened: Calculated as the number of cases resolved within 20 business days divided by the total number of cases opened for the period.	HR-SSC	99.90%	98.00%	Monthly	Critical	Timeliness	HROA
Employee/ Manager Inquiries	Employee/ Manager Inquiries	Level of Satisfaction: Percentage of surveyed Employees/Participants indicating "satisfied" using a 3 point scale; where 3 represents satisfied, 2 represents neutral, and 1 represents dissatisfied. Calculated as the number of respondents indicating "satisfied" divided by the total number of respondents.	HR-SSC	85.00%	80.00%	Quarterly	Critical	Effectiveness	HROA

Key Performance Indications

Leading Practice Service Levels-HR Functional

Level 2 Process	Level 3 Activity	Service Level Metric/Measurement	Metric Owner	Leading Practice Expected Service Level	Minimum Service Level	Measurement Window	Performance Indicator	Service Level Attribute	Source
Employee/ Manager Inquiries	Employee/ Manager Inquiries	First Contact Resolution: Calculated as the number of Service Center contacts (calls or emails) resolved on the first contact divided by the total number of Service Center contacts.	HR-SSC	85.00%	80.00%	Monthly	Key	Timeliness	HROA
Employee/ Manager Inquiries	Employee/ Manager Inquiries	Interaction Reliability: A single measure that reflects the accuracy, completeness and quality of selected interactions with the Service Center as defined by a mutually agreed upon evaluation and scoring methodology. This measure is completed via observation of a sample population of calls - the sample population shall be mutually agreed upon by service provider and buyer.	HR-SSC	95.00%	85.00%	Monthly	Key	Accuracy	HROA

Key Performance Indications

Leading Practice Service Levels-HR Shared Service Center

Contact Center

Ranking	Type	Metric	Target	Minimum	Frequency
GPI	Availability	Abandonment Rate. An abandoned call is defined as a call that is disconnected by the caller after the call is transferred to the representative queue. This measure is calculated as the number of abandoned calls divided by the total number of telephone calls.	3.00%	5.00%	Monthly
GPI	Availability	Average Speed to Answer. Measures the speed with which inbound calls to HR Contact Center are answered. Calculated as calls answered within 45 seconds divided by the total number of calls.	85.0%	80.0%	Monthly
KPI	Availability	Wait time. Wait time is defined as the amount of time a caller waits to speak with a service center representative, after the call is transferred to the ACD system. Wait time is calculated from the time a caller requests to be transferred to a service center representative to the time the caller reaches a service center representative. The measure is communicated in terms of the percentage of calls that reach a live voice within thirty (30) seconds.	80%	80%	Monthly
KPI	Availability	Blocked Calls. A blocked call is defined as a call where the caller receives a busy signal from provider due to insufficient phone lines. The measure is calculated as the total number of telephone calls with busy signals divided by the total number of telephone calls.	1%	1%	Monthly
CPI	Effectiveness	Customer Satisfaction. % of respondents rating their service experience (Satisfaction with phone service experience) in the top two boxes (4/5). # of respondents scoring 4 or 5 on a scale of 1-5 (Very Satisfied-5, Somewhat Satisfied-4, Neither Satisfied nor Dissatisfied, Somewhat Dissatisfied, Very Dissatisfied) divided by the total number of respondents.	85.0%	80.0%	Monthly
CPI	Effectiveness	First Call Resolution. Measures the percentage of calls that are resolved at the first level by the Tier 1 Agent (i.e. no case was escalated or required follow-up). Calculated as the number of Service Center contacts (calls or email) resolved on the first contact divided by the total number of Service Center contacts.	85.00%	80.00%	Monthly

Key Performance Indications

Leading Practice Service Levels-HR Shared Service Center

Case Management

Ranking	Type	Metric	Target	Minimum	Frequency
CPI	Accuracy	Case Resolution. Measures the percentage of cases resolved accurately, with regard to logging case notes, accuracy of resolution, practice of appropriate business process and case closure. A case must be created for all service requests which cannot be resolved on first contact. Calculated by a random sampling of cases across categories, functions, and times.	85.0%	80.0%	Monthly
CPI	Timeliness	Case Resolution - Priority 1. The closing of an issue shall be considered a timely close out if the issue, including any provider-related follow-up, if required, is resolved within two (2) business days for "priority 1" cases. The measure is calculated as the number of issues received with a timely close out (i.e., within two (2) business days) divided by the total number of issues (not requiring follow-up from client or third parties) tracked through provider's workflow system.	99.9%	99%	Monthly
KPI	Timeliness	Case Resolution - Priority 2. The closing of an issue shall be considered a timely close out if the issue, including any provider-related follow-up, if required, is resolved within five (5) business days for "priority 2" cases. The measure is calculated as the number of issues received with a timely close out (i.e., within five (5) business days) divided by the total number of issues (not requiring follow-up from client or third parties) tracked through provider's workflow system.	99%	96%	Monthly
GPI	Timeliness	Case Resolution - Priority 3. An issue shall be considered a final close out if the issue, including any provider-related follow-up, if required, is resolved within twenty (20) business days for "priority 3" cases. The measure is calculated as the number of issues with a final close out (i.e., within twenty (20) business days) divided by the total number of issues (not requiring follow-up from client or third parties) tracked through provider's workflow system.	99%	96%	Monthly

Key Performance Indications

Leading Practice Service Levels-HR Shared Service Center

Employee Data Management

Ranking	Type	Metric	Target	Minimum	Frequency
CPI	Accuracy	Individual Data Changes. Accuracy of employee data (individual) transaction processing. Calculated as the number of EDM service requests (table maintenance, data corrections, etc.) processed accurately divided by the total number of EDM service requests in the measurement window.	99.50%	98.00%	Monthly
CPI	Timeliness	Individual Data Changes. Timeliness of employee data (individual) transaction processing. Calculated as the number of EDM service requests (table maintenance, data corrections, etc.) processed within the agreed schedule divided by the total number of EDM service requests in the measurement window.	99.50%	98.00%	Monthly
CPI	Timeliness	Mass Data Changes. Timeliness of employee data mass transaction processing. Implementation of changes requested by client to employee data by Service Provider within 2 Business Days of receipt of such requests for changes for Severity 1 or 2 and within 5 Business Days within receipt of such requests for Severity 3 (and 4, for Technology Services only) requests. Measures the percentage of the Service Population for which such requests for changes are applied in a timely manner.	99.50%	98.50%	Monthly
GPI	Timeliness	Employee Records Delivery. Timely response to requests for employee records. Calculated as the number of employee records delivered within X business days of request divided by the total number of employee records requested in the measurement window.	99.50%	98.00%	Monthly
GPI	Compliance	Compliance. Percentage of leavers for whom Provider correctly completes the defined exit activities, for which it is responsible. Exit procedures process compliance = $(1 - (\text{Total number of exiting employees whose exit generates a reported error attributable to Provider} / \text{Total number of exited employees})) \times 100$.	98.0%	95.0%	Monthly
KPI	Accuracy	Severance Packages. Measures the accuracy of the severance packages created including materials, letters and calculations. Calculation: $\{(\text{Number of severance packages completed accurately}) / (\text{the number of severance packages requested})\} \times 100$.	99.0%	98.0%	Monthly

Key Performance Indications

Leading Practice Service Levels-HR Shared Service Center

Reporting

Ranking	Type	Metric	Target	Minimum	Frequency
KPI	Timeliness	<p>Reporting - Standard. Measures the timeliness of standard (recurring) reports. % of reports delivered to the recipient expressed in this Agreement on time, as follows:</p> <ul style="list-style-type: none"> — weekly reports: within 2 Working Days of end of period — monthly reports: within 3 Working Days of end of period, except for the Monthly Performance Report for which this is within 10 Working Days of end of period — quarterly reports: within 5 Working Days of end of period — annual reports: within 15 Working Days of end of period <p>"End of period" means the date/timeframe agreed in the payroll calendar.</p>	99.00%	97.00%	Monthly
GPI	Accuracy	<p>Reporting - Standard. Measures the accuracy of the information delivered in standard (recurring) reports. Number of reports rejected or resubmitted for incomplete or inaccurate information divided the number of reports generated. Standard Report means a report that does not require Technical Support. Calculation: $\{(Total\ number\ of\ Standard\ Reports\ delivered\ without\ client\ rejection\ or\ not\ submitted\ more\ than\ once) / (Total\ number\ of\ Standard\ Report\ requests.)\} * 100$</p>	99.0%	98.0%	Monthly
GPI	Timeliness	<p>Ad hoc reporting timeliness. Design and provide ad hoc reports (those that are not standard/recurring but do not require assistance from the IT department) for Query Functionality as requested by client within 8 business hours of client's request</p>	99.00%	98.00%	Monthly
CPI	Accuracy	<p>Reporting - Statutory. In scope compliance reporting (e.g., EEO) produced in the correct format and accurately reflects data as recorded on the HRMS. Calculated as the total number of agreed upon compliance reports completed accurately divided by the total number of agreed upon compliance reports multiplied by 100.</p>	100.00 %	100.00%	Annual

Agenda

- Ken Millen introduction
- Some background and context around our topic
- Importance of service **levels** measurements
- What should we be measuring?
- Some examples of service levels
- What about dashboards? Let's look at some examples
- Open discussion

Employee Services

Agency Services

Business Information & Support

Customer Satisfaction

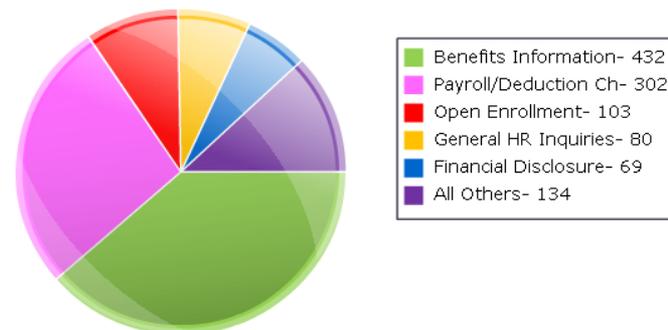
*Verizon Data

Employee Services Call Volume



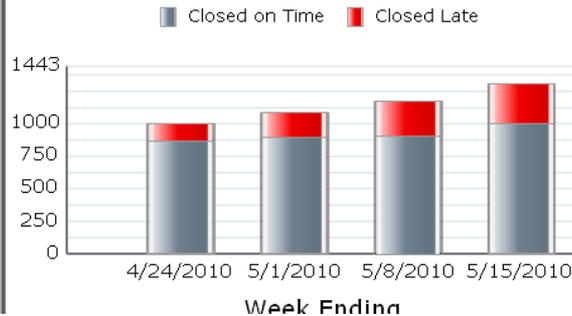
Top 5 Ticket Categories

For Week Ending 5/15/2010



Week Ending	4/24/2010	5/1/2010	5/8/2010	5/15/2010
Call Abandon Rate	3%	3%	5%	2%

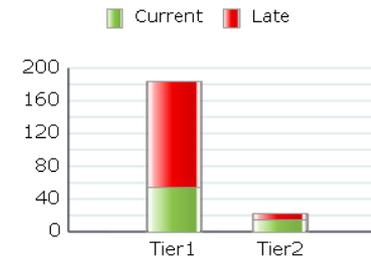
Tier 1 - Employee Services - Ticket Volume



Tier 2 - Employee Services - Ticket Volume



Pending As of Date 05/19/2010



Employee Services

Agency Services

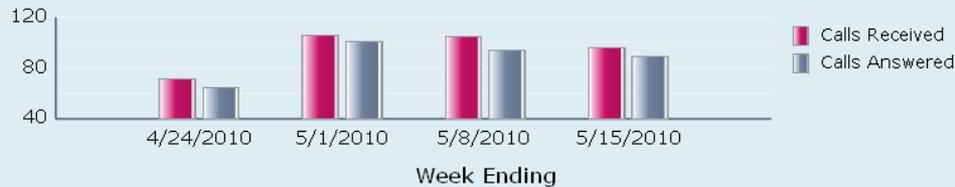
Business Information & Support

Customer Satisfaction

Agency Services Call Volume

(Includes Business Information & Support Calls)

*Verizon Data



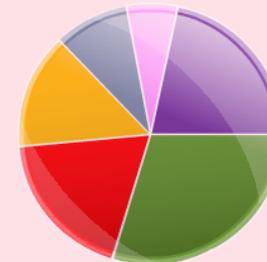
Week Ending	4/24/2010	5/1/2010	5/8/2010	5/15/2010
Call Abandon Rate	10%	5%	10%	7%

Top 5 E-PAR Categories

Week Ending 5/15/2010

*E-PAR Data

[Details](#)



- Fill a Vacant Position- 248
- Separation- 157
- Reclass/Reallocate Pos- 120
- Organization Change- 77
- Change Complement- 52
- All Others- 181

E-PAR Transactions

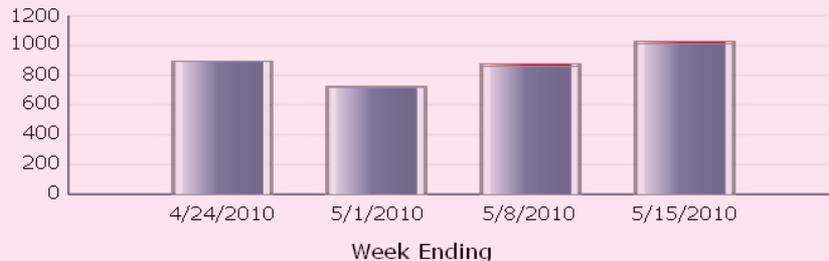
HR Help Desk

Agency Services E-PAR Transactions

*E-PAR Data

[Late Transaction Details](#)

■ Closed On Time ■ Closed Late



E-PAR Pending Transactions

*E-PAR Data

[Late Transaction Details](#)



- Late- 1
- Pending- 347

Employee Services

Agency Services

Business Information & Support

Customer Satisfaction

*Help Desk Data

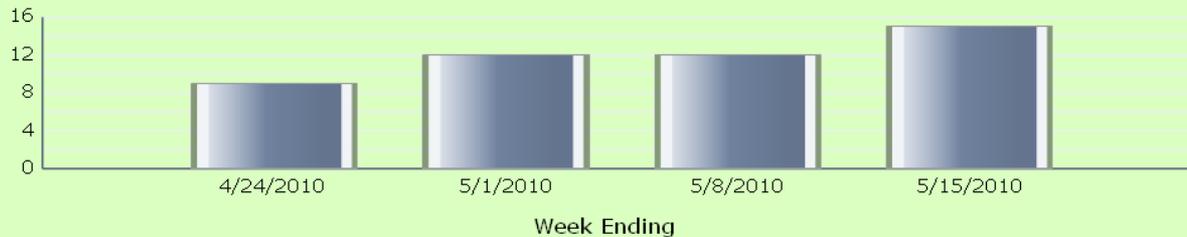
Report Requests Completed

Request Type

All

■ Completed On Time ■ Completed Late

Help



Report Requests Pending As Of 5/20/2010

Category	Pending	Late
Complex	2	0
Customary	0	0
RTK/Public Info	0	0

E-PAR Transactions Completed

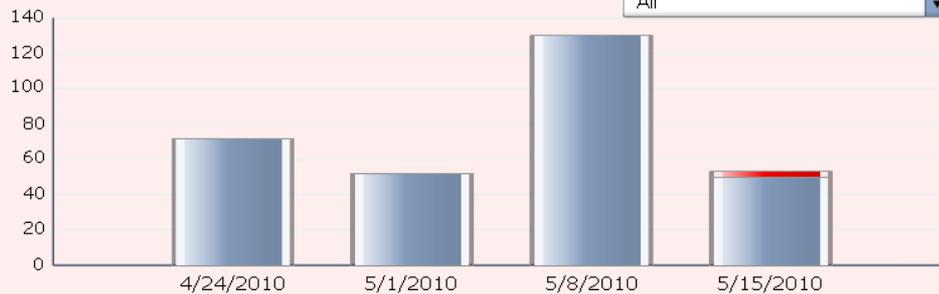
*E-PAR Data

Late Transaction Details

■ Closed On Time ■ Closed Late

Transaction Type

All



Pending BI&S E-PAR Transactions

*E-PAR Data



■ Pending - 34
■ Late - 0

Employee Services

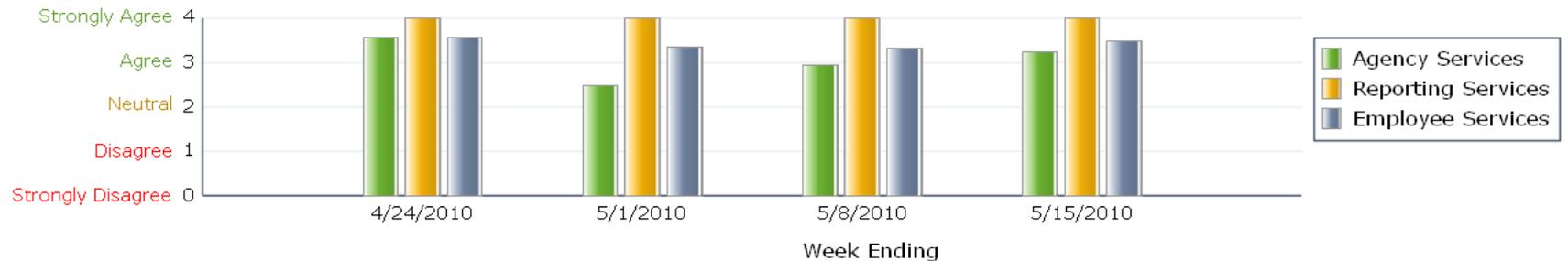
Agency Services

Business Information & Support

Customer Satisfaction

Customer Service Satisfaction

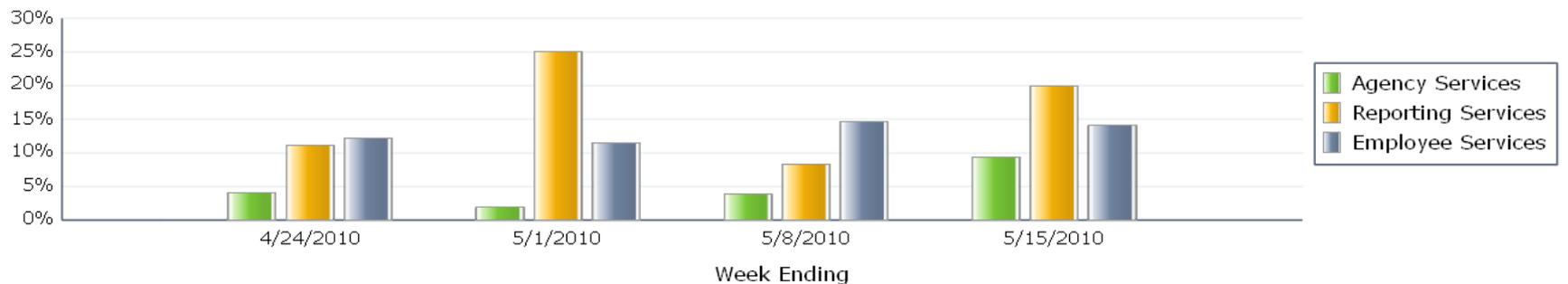
Average Score



Survey Participation Overview

Survey Participation Details

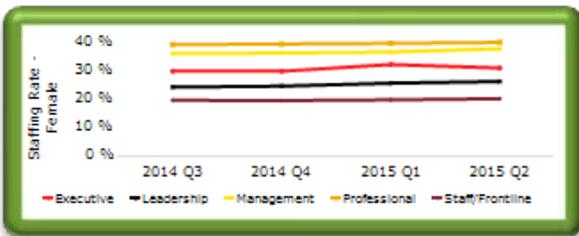
Customer Service Survey Participation Rate



HR MONTHLY SCORECARD: YTD as of June 30, 2015

Headcount / Workforce Makeup

Gender Diversity Trend



Voluntary Termination Trend

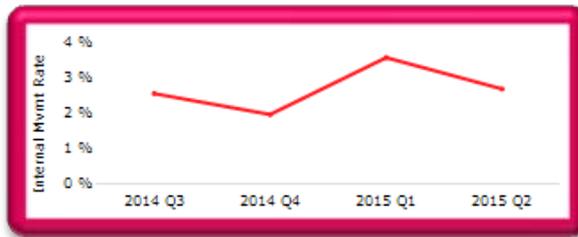


Population Breakdowns

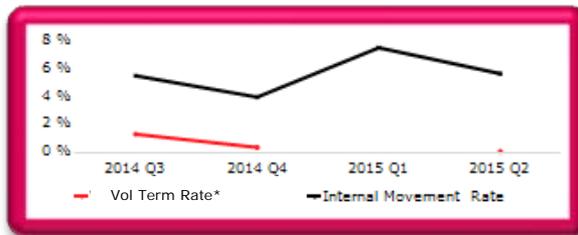
	Staffing Rate - Female	Staffing Rate - Non-Regular	Headcount	Vol Term Rate*	Female Vol Term Rate*	High Perf Vol Term Rate*	Low Tenure Vol Term Rate*
FRANCE BU	34%	24%	1,005	2%	1%	0%	4%
GREAT BRITAIN BU	47%	2%	1,164	7%	7%	0%	10%
NORTHERN EU BU	28%	10%	1,715	2%	2%	1%	4%
SUPPLY CHAIN	14%	7%	6,535	1%	3%	0%	5%
OPERATIONS	22%	8%	10,419	2%	3%	0%	6%
GLOBAL FUNCTIONS	55%	5%	1,518	4%	4%	0%	3%
ALL CCE	26%	8%	11,939	2%	4%	0%	5%

Talent Flow

Movement Trends



High Performer Movement Trends

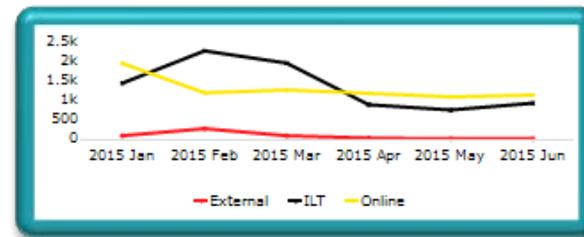


Talent Flow Breakdowns

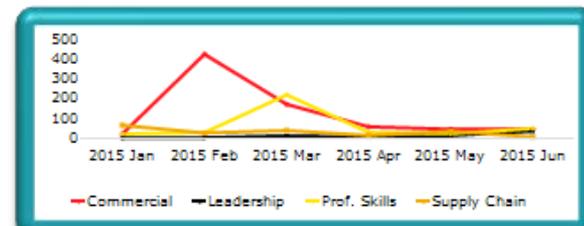
	Starters	Ext. Hire as % of All Mvmt	% of Starters Female	% of Promo Female	% of Promo High Perf
FRANCE BU	266	83%	27%	75%	63%
GREAT BRITAIN BU	97	47%	57%	53%	67%
NORTHERN EU BU	159	57%	42%	43%	43%
SUPPLY CHAIN	465	60%	28%	22%	55%
OPERATIONS	987	63%	33%	37%	55%
GLOBAL FUNCTIONS	194	58%	60%	47%	59%
ALL CCE	1,181	62%	38%	41%	57%

Learning & Development

Course Trends - Type



Course Trends - Category



Training Breakdowns - External, ILT, Online

	Last Month Training Penetration Rate	Last Month Course Completions	YTD Course Completions	Avg Mthly Training Hrs per Employee (6 mths)
FRANCE BU	6%	86	1,023	9
GREAT BRITAIN BU	13%	221	1,419	7
NORTHERN EU BU	10%	233	1,748	6
SUPPLY CHAIN	13%	1170	10,302	7
OPERATIONS	11%	1710	14,492	7
GLOBAL FUNCTIONS	14%	363	2,050	5
ALL CCE	12%	2271	17,654	7

- Voluntary termination measure has been updated so now includes resignations only. As a result we see our turnover overall is very low at 2%, driven by employees with less than 5 years service. Area for attention is GB BU which displays the highest Vol turnover rate at 7%
- Female staffing rate remains at 26% (1% point higher than 2015)

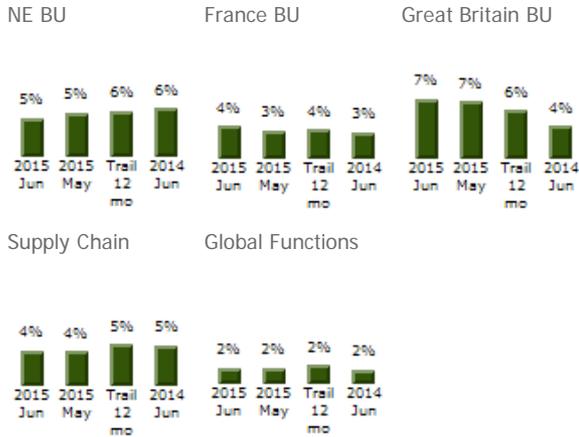
- External hire rate as a % of all movement increased to 62% compared to 59% reported for May and is linked to an increase of non-regular headcount in Supply Chain
- Females in FR BU and GB BU continue to account for more than 50% of promotions (into Prof and Mgmt. grades)

- As per last month the number of courses and consequently time spent on learning is lower than the same period last year, however there is an increase in June compared to May

HR MONTHLY SCORECARD: YTD as of June 30, 2015

Absence

Unscheduled Absence Trends



Absence Breakdowns

	Short-term Unscheduled Absence Rate	Long-Term Unscheduled Absence Rate	Sick Leave Occurrences	ER Case Rate
FRANCE BU	1%	3%	56	1%
GREAT BRITAIN BU	1%	6%	128	2%
NORTHERN EU BU	0%	4%	76	1%
SUPPLY CHAIN	2%	2%	692	1%
OPERATIONS	1%	3%	952	1%
GLOBAL FUNCTIONS	0%	2%	53	2%
ALL CCE	1%	3%	1,005	2%

HR Services

Case Volume Trends



Resolution Trends



Top 5 Categories for the Month



Case Breakdowns for the Month

	Case Volume	Case Rate	% First Call Resolved	% First Day Resolved
FRANCE BU	775	77%	69%	53%
GREAT BRITAIN BU	587	50%	74%	54%
NORTHERN EU BU	1,282	75%	55%	53%
SUPPLY CHAIN	4,461	69%	62%	52%
OPERATIONS	7,105	69%	63%	52%
GLOBAL FUNCTIONS	1,553	103%	68%	55%
ALL CCE	10,226	86%	65%	53%

Topical/Seasonal

2015 IPO & IDP

(As of 2nd July 2015)

	% Eligible Employees WITH IPO	Average Nr Performance Objectives	% Eligible Employees WITH IDP	Average Nr Development Goals
FRANCE BU	92%	7.1	84%	1.5
GREAT BRITAIN BU	97%	5.7	88%	2.5
NORTHERN EU BU	96%	6.5	91%	2.3
SUPPLY CHAIN	96%	7.0	92%	1.8
OPERATIONS	96%	6.7	91%	1.9
GLOBAL FUNCTIONS	93%	6.2	79%	2.1
ALL CCE	95%	6.7	90%	1.9

Core Course Completions

(As of 1st July 2015)

	DIEB	MOP	MOT	MM1
FRANCE BU	41%	66%	54%	29%
GREAT BRITAIN BU	63%	55%	56%	20%
NORTHERN EU BU	75%	68%	58%	35%
SUPPLY CHAIN	77%	46%	37%	14%
OPERATIONS	71%	52%	47%	19%
GLOBAL FUNCTIONS	64%	23%	29%	3%
ALL CCE	70%	46%	46%	15%

- GB BU continues to display a higher unscheduled absence rate compared to the same period last year (requires attention alongside the higher voluntary turnover rate)
- Swedish absences are not included – due to new absence codes being mapped into WFA and will be included in July scorecard

- Case volume continues at higher rate than prior year but not affecting first call or first day resolved rates
- Payroll continues to be the category with the highest queries

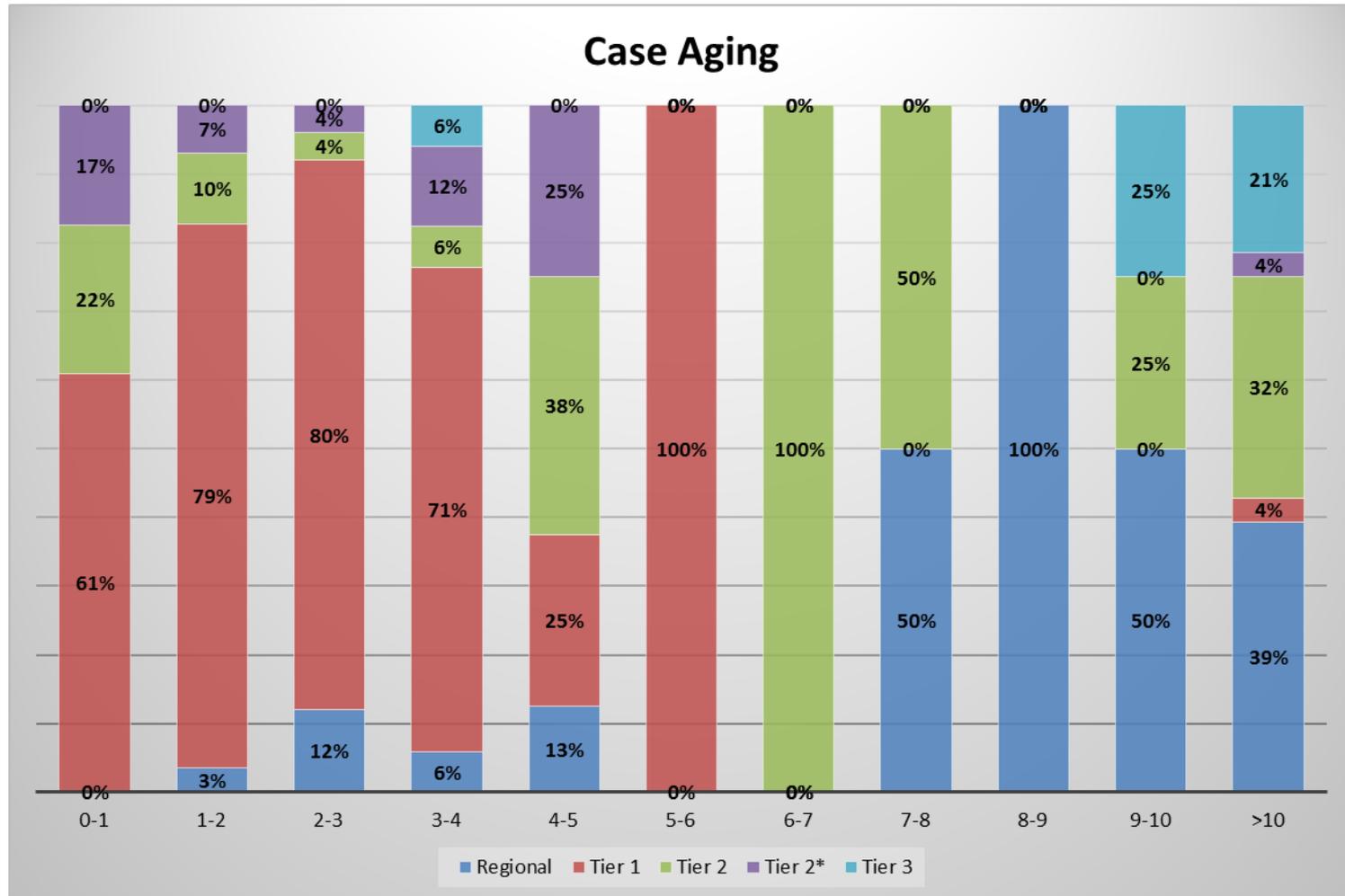
- IPO/IDP: Slight decrease in the % of employees with IDP and IPO compared to beginning of June due to inclusion of new starters
- Core Course Completions: New starters also causing a slight decrease in % completion rate for DIEB

Note: Completion rates for MOP, MOT & MM1 is based purely on eligibility criteria and therefore does not represent the total population that have completed the courses, for full details refer to the definitions on slide 4

Large Home Improvement Company

HR Service Center Daily Metrics							
ALL REQUESTS							
U.S. ASSOCIATE & MANAGER	Call Volume	Abandon Rate	Average Time to Abandon	Average Speed of Answer	Average Call Handle Time	Total Contacts	Contacts Resolved Same Day
Sat. 10/24/09	474	1%	0:00:16	:12	0:07:31	1261	66%
Sun. 10/25/09	266	2%	0:00:23	:12	0:07:41	1147	58%
Mon. 10/26/09	3031	3%	0:01:16	:52	0:06:52	4350	75%
Tue. 10/27/09	2539	4%	0:00:51	:45	0:07:07	4066	72%
Wed. 10/28/09	2200	4%	0:01:13	:55	0:06:41	3963	73%
Thurs. 10/29/09	2216	3%	0:00:51	:38	0:06:52	3864	74%
Fri. 10/30/09	2855	3%	0:01:25	1:12	0:07:20	4209	81%
Week Ending 10/30/09 Totals	13581	3%	0:01:05	:50	0:07:01	22860	74%
Tolerance		<5%		< :30			>= 80%
Levels		5% - 10%		:30 - 1:30			60% - 70%
		>10%		> 1:30			<60%
			In Tolerance		Out of Tolerance		

Case Aging by Tier - Large Credit Card Company



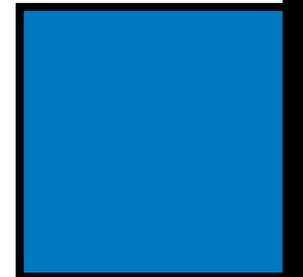
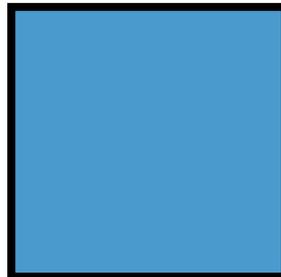
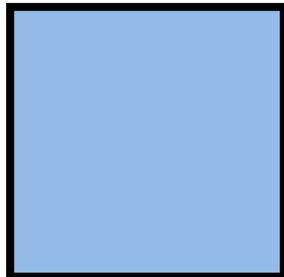
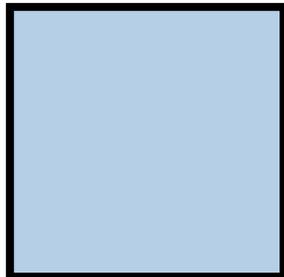
Agenda

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- Some background and context around our topic
- Importance of service levels measurements
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Sears Associate Service Center

HR Service Delivery Overview May 10, 2004



Center Background

1994 - center established to replace over 20 geographic HR and payroll centers.

1. creation resulted in significant headcount and budget reductions (300 associates and approximately \$7M in annual operating expenses)
2. Concurrent with this consolidation, payroll operations were moved from Finance to HR
3. Primary services included centralized associate records, payroll, payroll tax administration, benefits administration and core transaction processing. (IT and HRIS support provided at Hoffman Estates.)

1998 - added call center services

1999 - moved to a single 800 number (1-888-88sears) to handle associate and unit service requests

1999 - 2000 - completed the conversion to PeopleSoft and added 88sears.com

2001 - integrated, expanded, and web-enabled an existing, centralized PeopleSoft transaction processing center (TPC)

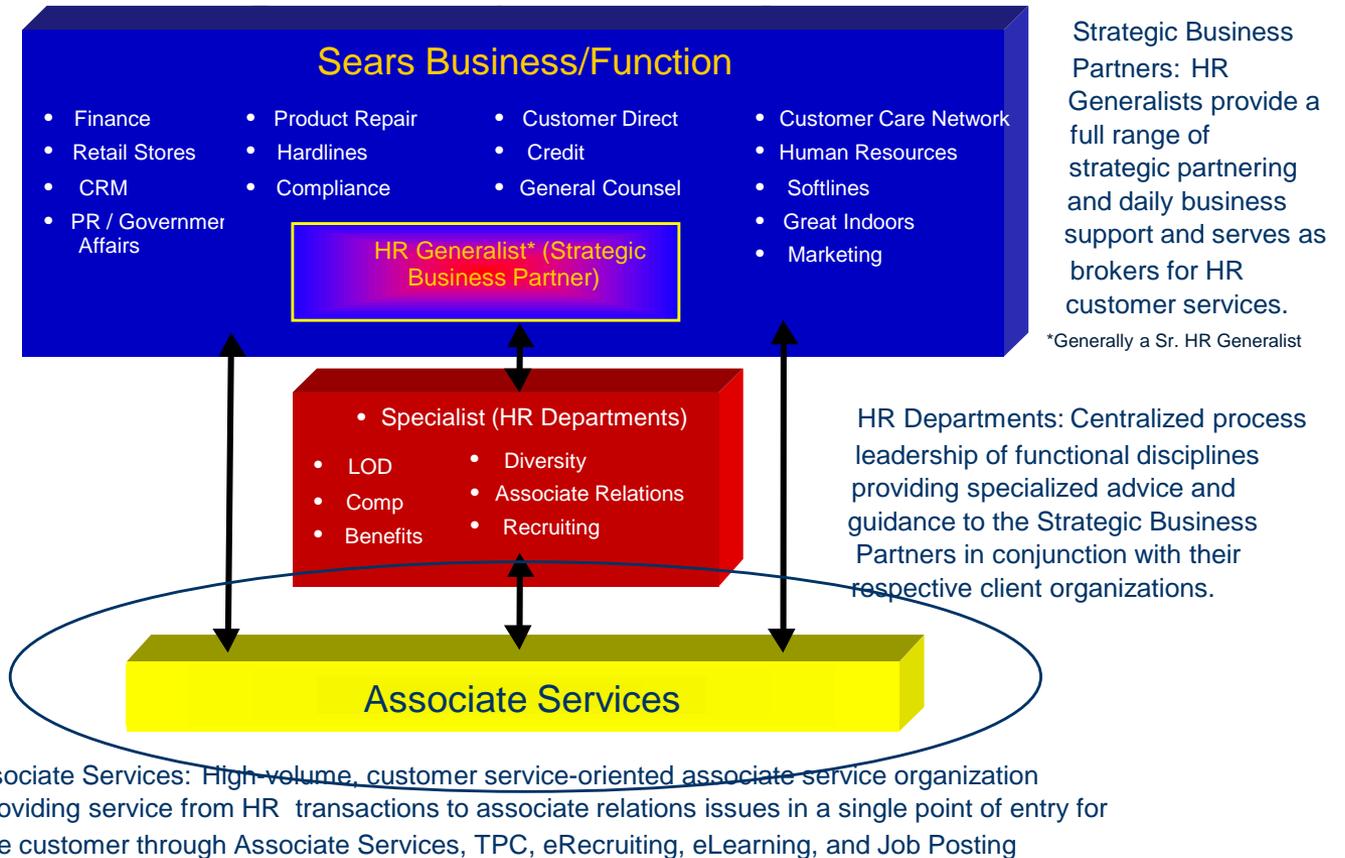
2001 - outsourced benefits administration and payroll tax administration

2002 - added associate relations front-end services and support for eLearning and eRecruiting store initiatives.

2003 - integrated all HR information and transactions into one Web site - 88sears

2003 - converting Sears into a total electronic pay (ePay) environment

HR Service Delivery Model



Associate Service Delivery Model

IVR (1-888-88sears)

- associate and manager focus
- single point of contact
- benefit and payroll self service
- routing to third-party vendors

Desktop (PeopleSoft)

- HR focus
- "view only" access
- access associate records
- HR analysis

Web (88sears.com)

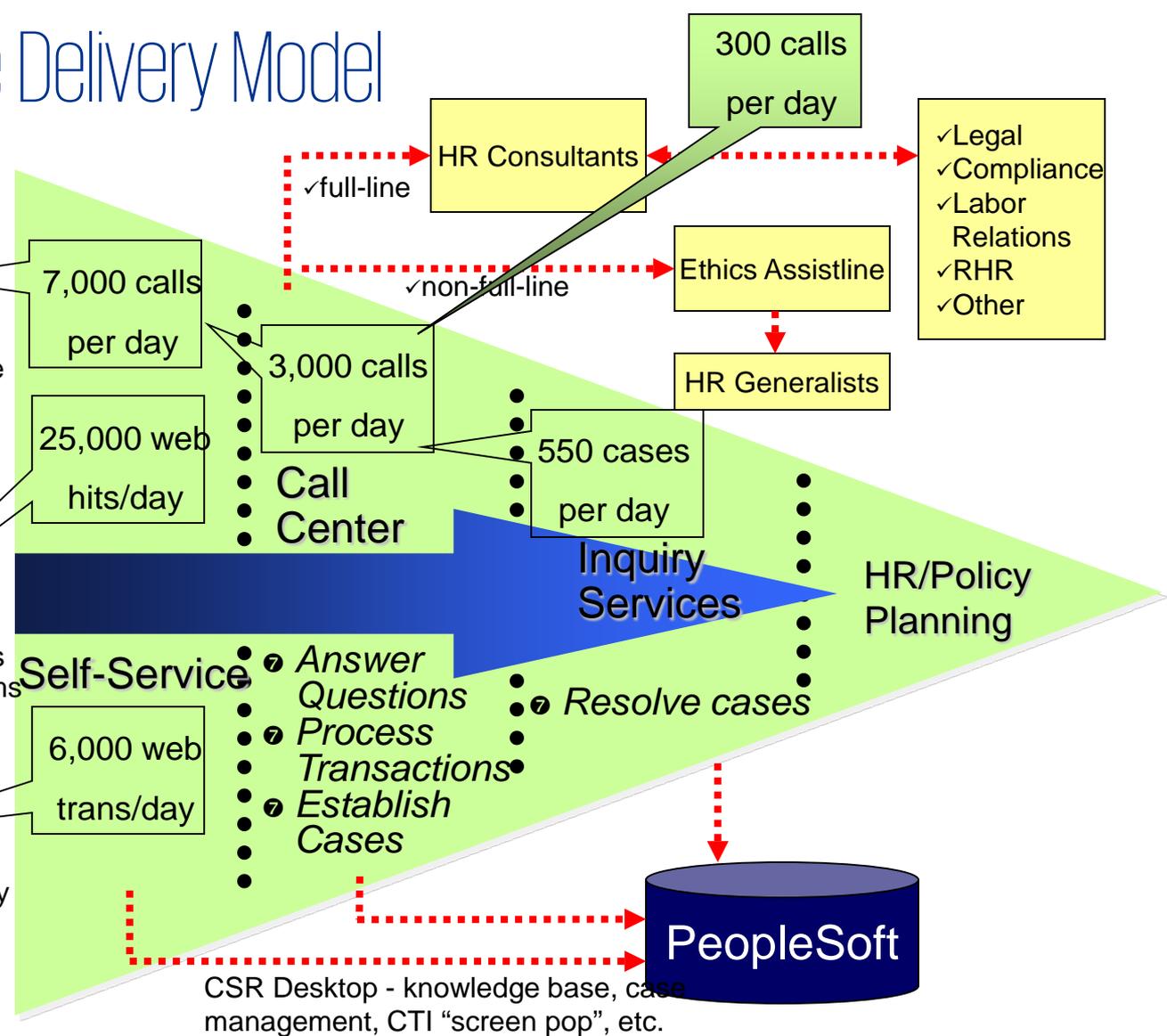
- manager and associate focus
- communication, policies, forms
- associate access to data
- associate transactions once Internet enabled

Web (TPC On-line)

- HR and manager focus
- transaction data automatically loaded into PeopleSoft

Third-party Vendors

- outsourcers providing self-service



Service Center Statistics

Measure	1998	2001	2002	2003
Number of calls offered to 888-88sears	600,000	813,536	1,637,389	1,632,870
Number of calls offered to a CSR	N/A	600,361	722,739	746,574
Percentage of self-service calls	10%	26%	56%	54%
Percentage of calls that become cases	45%	21%	19%	19%
Outstanding cases on December 31 st	2,800	664	755	1093
Customer satisfaction	74%	89%	89%	90%
Automated web transactions	N/A	110,634	967,004	1,814,375
88sears web hits	N/A	415,698	1,498,000	2,095,434

HR Tools: Five integrated solutions that drive substantial productivity gains within the business and within HR:

■ *eRecruiting*

Automation of the hiring process from the employment application to data entry into PeopleSoft (SOLAR). Reduce administrative activity in hiring process while delivering more qualified candidates for managers to interview.

■ *eLearning*

Automation of training delivery to create a self-paced, prescribed training experience for the associate. Reduce time spent delivering training while improving the consistency and quality of the training experience.

■ *88sears...Associate Services*

A new model for associate relations help that allows for access to highly skilled HR professionals. Improve service to field and consistency in resolving associate relations issues.

■ *88sears...Manager Self-service/Transaction Processing*

A centralized transaction processing resource for all PeopleSoft (SOLAR) data entry. Simplify transactions for store and ensure quality of data in HR system.

■ *SSG – Scheduling for Sales Growth*

Automation of scheduling based weekly sales forecasts. In addition allows for capturing daily time and attendance including monitoring of punches, requested time off and transmission of hours to PeopleSoft.

eRecruiting and eLearning - 2004 YTD

eRecruiting Results

1/1/2004– 4/30/2004

Completed Applications (45% from outside store)	262,010
Completed Assessments	210,280
Number of Passed Assessments	167,610
% Passed Assessments	80%
Total hires	27,170

eLearning Results

1/1/2004 - 4/30/2004

Number of Courses Started	1,355,600
Number of Courses Completed	1,300,500
Total Unique users as of 4/30/2004	168,859



Keys to Success

- Executive leadership at the CEO level
- Clear business strategy and HR operating model – simplicity (one place to call and access through the web)
- Leveraging what we had (lipstick on a pig)
- Establishing baseline measures and tracking them over 7 years
- High performing team
- Staying the course – strategy execution takes time

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kpmg.com/app

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F: (916) 584-7083

COUNTY PERSONNEL ADMINISTRATORS ASSOCIATION OF CALIFORNIA (CPAAC)

Transgender Issues

9/30/2016

PRESENTED BY:

Gage Dungy

Transgender Issues

County Personnel Administrators Association of California (CPAAC) Fall Conference

September 30, 2016 | Presented By: Gage Dungy

LCW LIEBERT CASSIDY WHITMORE

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Transgender Awareness

- Definition
- Protected Classification and Legal Debate
- Discrimination and Harassment
- Things to Remember

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Definition

- **Transgender:** "A General Term that Refers to a Person Whose Gender Identity Differs From the Person's Sex at Birth. A Transgender Person May or May Not Have a Gender Expression That is Different From the Social Expectations of the Sex Assigned at Birth. A Transgender Person May or May Not Identify as 'Transsexual.'"
2 CCR section 11030(e)

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Definition

- **Gender Identity:** Person's Internal Sense of Gender.
- **Gender Expression:** Way in Which a Person Expresses Their Gender Identity Through Clothing, Behavior, Posture, Mannerisms, Speech Patterns, Activities.

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Definition

- **Gender Transition:** Complicated, Multi-Step Process that Can Take Years as Transgender People Align Their Anatomy With Their Gender Identity and/or Gender Expression.

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Protected Classifications

- **Sex**
- **Gender/Gender Identity/Gender Expression**
- Race/National Origin/Color
- Disability/Medical Condition
- Genetic Information/Characteristics
- Religious Creed
- Marital Status
- Military and Veteran Status
- Age (40 Years of Age and Older)
- Sexual Orientation
- Opposition to Harassment

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Protected Classification

- Transgender **AND** Gender Transition are Protected Classifications Under California and Federal Law.
 - **California Law (FEHA):** Expressly Protects Transgender and Gender Transition.
 - **Federal Law (Title VII):** Impliedly Protects Transgender and Gender Transition as Part of “Gender” Protected Classification Based on EEOC Interpretation.

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Legal Debate

- **California Law (2014)** – Transgender Youth Can Use Restrooms and Participate on Sports Teams with the Gender they Identify With.
- **North Carolina Law (2016)** – Overturned City of Charlotte LGBT Anti-Discrimination Ordinance and Law Now Requires Individuals May Only Use Restrooms That Correspond to Their Sex at Birth.

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Legal Debate

- **U.S. Supreme Court**
 - In August 2016, the Court Issued a Stay on a Federal Appellate Court Decision Ordering a Virginia School District to Allow a Transgender Student to Use the Bathroom of the Gender Identified.
 - Awaiting Fall 2016 Determination if Court Will Hear Case.

Gloucester County School Board v. G.G.
136 S. Ct. 2442 (2016).

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DFEH Guidance to Employers

- **Hiring**
 - Employers Should Not Ask Questions Designed to Identify Transgender Status or About a Person's Body or Whether They Plan to Have Surgery Related to Gender Identity, Gender Expression, or Transition.
- **Dress Code**
 - Cannot Prohibit an Employee from Dressing in a Manner Suitable for Employee's Gender Identity, But Can Enforce Dress Code As it Would Otherwise for Gender Employee Identifies With.

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DFEH Guidance to Employers

- **Restrooms**
 - "All employees have a right to safe and appropriate restroom and locker room facilities. This includes the right to use a restroom or locker room that corresponds to the employee's gender identity, regardless of the employee's assigned sex at birth. In addition, where possible, an employer should provide an easily accessible unisex single stall bathroom for use by any employee who desires increased privacy, regardless of the underlying reason. A private restroom of this type can also be used by an employee who does not want to share a restroom with a transgender coworker. However, use of a unisex single stall restroom should always be a matter of choice. No employee should be forced to use one either as a matter of policy or due to continuing harassment in a gender-appropriate facility."

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EEOC Guidance to Employers

- **Restrooms**
 - Denying an Employee Equal Access to a Common Restroom Corresponding to the Employee's Gender Identity Is Sex Discrimination.
 - An Employer Cannot Condition this Right on the Employee Undergoing or Providing Proof of Surgery or Any Other Medical Procedure.
 - Cannot Avoid Requirement to Provide Equal Access to Common Restroom by Restricting a Transgender Employee to a Single-User Restroom Instead.

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Discrimination and Harassment

- Same FEHA and Title VII Protections Against Discrimination and Harassment Apply to Employees Based on Gender Expression, Gender Identity and/or Gender Transition.

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Unlawful Discrimination

- **Elements of Unlawful Discrimination**
 - An Adverse Employment Action Taken Based on a Protected Category Status.
 - **Adverse Employment Action** = Action Taken Within the Course and Scope of Employment
 - Hiring, Firing, Demotion, Failure to Promote, Assignment of Job Duties, etc.

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Hostile Work Environment

- **Definition of Hostile Work Environment Harassment:**
 - Verbal, Visual or Physical Conduct
 - Based on Protected Classification
 - Objectively and Subjectively Offensive (Unwelcome)
 - Severe **or** Pervasive
 - Unreasonably Interferes with Work

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Supervisor's Duty to Respond

- "Harassment... Shall Be Unlawful If the Entity, or its Agents or Supervisors, **Knows or Should Have Known of This Conduct** and Fails to Take Immediate and Appropriate Corrective Action."

Government Code section 12940(j)(1)

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Supervisor's Duty to Respond

- Report Observed/Overheard Conduct
- Forward Complaints/Issues to Management and Human Resources Promptly, Including:
 - Third-Party Complaints
 - Verbal Complaints
 - Rumors

Remember:
The Word "Harassment" Need Not Be Used to Trigger Your Duty to Act

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Case Study

Christine was born a female biologically. Christine recently has begun taking male hormones, has changed his name to Christopher, presents himself to the public as a male, but has no plans to undergo gender reassignment surgery. Christopher has recently begun using the men's restroom. Two male employees complain to the City that Christopher is creating a hostile work environment for them by doing so.

How Do You Respond?

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Case Study

During a break in the break room, two employees start joking about the fact that Caitlin Jenner didn't need to change himself from Bruce to Caitlin because he already looked like a woman when he was Bruce. You are a supervisor and overhear the conversation.

What Do You Do?

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Things to Remember

- Respect
- Use the Correct Pronoun
- Confidentiality and Privacy
- Work Closely with HR

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Respect

- It Isn't Easy – Be Understanding of That Difficulty
- Respect the Employee's Decision to Identify in the Gender
- Monitor the Workplace and Anticipate Challenges
- Remember What Matters – The Employee Can do the Job!

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Use the Correct Pronoun

- Use the Name and Pronoun that the Employee is Now Identifying With and Presenting at Work.
- The Employee is a “He” or “She” – Not “Transgender”.

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Confidentiality and Privacy

- Employee's Transgender or Transitional Situation is ***Confidential!***
 - **NOT** Okay to Explain the Employee's Change of Gender Identity Process.
 - **NOT** Okay to Spread Rumors or Gossip About an Employee's Gender Identity or Transition Process.

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Work Closely with HR

- Your Agency's HR Department Needs to Be Prepared to Address Transgender Issues that May Arise.
 - Your Employees Won't Know the Answers to Every Question on Transgender Issues.
 - Instruct Employees to Ask HR About Transgender Questions.
 - HR Should Be Closely Involved in Any Transgender Issues.

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Case Study

Nathan and Marlene work with Joe, who is currently going through gender transition. Nathan and Marlene come into your office and mention that they think Joe is transitioning, but aren't sure. They tell you that they are confused and don't know what to do. They aren't sure what to call Joe, and whether they should talk about the transition process with Joe.

What Do You Do?

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Thank You

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COUNTY PERSONNEL ADMINISTRATORS ASSOCIATION OF CALIFORNIA (CPAAC)

Proposition 64 - Marijuana in the Workplace: What Can We Anticipate?

9/30/2016

PRESENTED BY:

Gage Dungy

Proposition 64 – Marijuana in the Workplace: What Can We Anticipate?

County Personnel Administrators Association of California (CPAAC) Fall Conference | September 30, 2016

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Agenda

- Overview of Marijuana Use in the U.S. and Public Perception
- Current Laws on Marijuana Use in the Workplace
- Impact of Recreational Marijuana Initiative of 2016 (Prop. 64)



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Overview of Marijuana Use in the U.S. and Public Perception

Proposition 64 – Marijuana in the Workplace: What Can We Anticipate?

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Marijuana Statistics

- A Recent Study Indicated That 18% of High School Students Reported Smoking a Cigarette in the Past 30 Days, While 23% Reported Smoking Marijuana.

Source: CDC

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Marijuana Statistics

- Daily or Near-Daily Use of Various Substances Among College Students in 2014:
 - Marijuana 5.9%
 - Cigarettes 5.2%
 - Alcohol 4.3%

Source: Monitoring the Future, University of Michigan

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Public Opinion is Changing

Do you think the use of marijuana should be made legal, or not?

■ % Yes, legal

Year	% Yes, legal
1969	12
1973	15
1977	28
1981	25
1985	23
1993	25
1997	31
2001	34
2005	36
2009	44
2013	58

GALLUP

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Hillary Clinton



"I would certainly not want the federal government to interfere with the legal decision made by the people of Colorado."
- October 14, 2015

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Donald Trump



"I think that should be a state issue."
- October 29, 2015

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Bernie Sanders



“Bernie favors removing marijuana from the list of controlled substances regulated by federal law.”

- October 28, 2015 (from his website)

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Ted Cruz



“[Colorado and Washington have] decided that they want to legalize it. I think it is appropriate for the federal government to recognize that the citizens of those states have made that decision.”

- April 16, 2015

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Current Laws on Marijuana Use in the Workplace

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Legal Issues that Can Impact Marijuana Use in the Workplace

- Employers Must Consider:
 - Federal and State Law
 - Federal and California Drug-Free Workplace Acts
 - Federal Department of Transportation Regulations (DOT)
 - Americans with Disabilities Act (ADA) and the Rehabilitation Act
 - Fair Employment and Housing Act (FEHA)
 - Privacy Rights (Cal. Constitution & U.S. Constitution)

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Legal Context

- Federal Law:
 - Controlled Substances Act (CSA) Designates Marijuana as a Schedule I Substance.
 - U.S. Supreme Court has Upheld Federal Regulation of Marijuana.
- California Law:
 - Marijuana Use/Possession Prohibited under Health and Safety Code with Some Exceptions.



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The Law Requires Employers to Provide a Drug-Free Workplace

- Public Employers Should Be Familiar With:
 - The Federal Drug-Free Workplace Act
 - The California Drug-Free Workplace Act
 - Department of Transportation (DOT) Regulations



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Federal Drug-Free Workplace Act

- Employers Who Receive Federal Grants Must:
 - Establish a Drug Free Awareness Program.
 - Publish a Statement.
 - Distribute a Statement.
 - Notify Employees Under Grant of Requirement to Report Workplace Drug Convictions Within 5 Days of Conviction.
 - Impose Sanctions on Convicted Employees.
 - Inform Granting Agency of Convictions.
 - Make Good Faith Effort to Maintain Drug Free Workplace.

DOES NOT REQUIRE DRUG TESTING!

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California Drug-Free Workplace Act

- Employers Who Receive a State Grant or Contract Must:
 - Establish Drug Free Awareness Program.
 - Provide Employees with Written Statement.
 - Describe Penalties for Violations.
 - Inform Employees About Dangers of Drug Abuse in Workplace.
 - Identify Available EAP's.

ALSO DOES NOT REQUIRE DRUG TESTING!

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DOT Drug and Alcohol Testing

- Marijuana Use is Prohibited for DOT-Covered Employees and is Tested For in DOT Drug Tests:
 - Pre-Employment
 - Post-Accident
 - Reasonable Suspicion
 - Random
 - Return To Duty /Follow-Up



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Is Drug Use a Protected Disability?

- Protected Disability:
 - Alcoholism
 - Former Drug Users May Be Protected
- Not a Protected Disability:
 - Current Drug Use, Including Marijuana



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How About Medical Marijuana?

TRUE or FALSE

An Employer is Required to Accommodate an Employee's Use of Medical Marijuana in the Workplace if the Employee is Using the Marijuana Pursuant to a Physician's Recommendation.



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Accommodate Medical Marijuana Use in the Workplace?

FALSE

Ross v. RagingWire Telecommunications (2008) 42 Cal. 4th 920.

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Prohibiting Drug and Alcohol Use in the Workplace

- Despite Privacy Rights and Possible Disability Protections Under the ADA and FEHA, an Employer May:
 - Prohibit Illegal Use of Drugs and Alcohol in the Workplace.
 - Require Employees Not Be Under the Influence of Illegal Drugs or Alcohol in the Workplace.
 - Require Compliance with Drug-free Workplace Acts.
 - Hold Drug User or Alcoholic to Same Qualification, Performance and Behavioral Standards.

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Workplace Preventive Measures

- Workplace Drug & Alcohol Policy
- Pre-Employment Drug Screening of Safety-Sensitive Employees
- Drug and Alcohol Testing of Current Employees



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Labor Code section 432.8

Labor Code Section 432.8 Prohibits Employers From Asking About Certain Marijuana Convictions More Than Two Years Old.



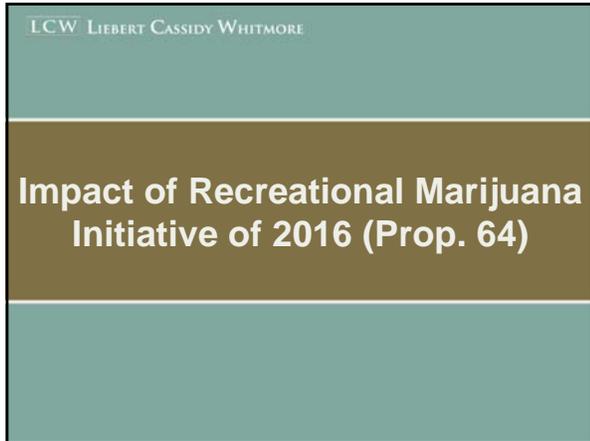
* Except Peace Officers

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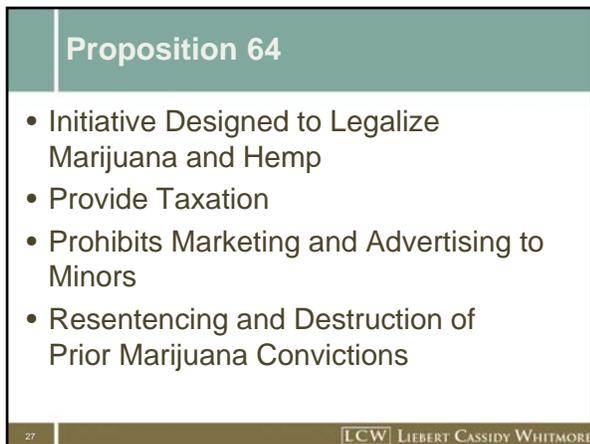
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Proposed Health & Safety Code Section 11362.45(f)

Nothing in section 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict, or preempt:

(f) The rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.

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Legal Context

- Coats v. Dish Network (2015) 350 P.3d 849.
 - Mr. Coats Sued for Wrongful Termination After He Tested Positive for Marijuana. Mr. Coats is a Quadriplegic Who Used Medical Marijuana Outside of Working Hours. Mr. Coats Was a Registered Medical Marijuana User, Accessing the Product in a Manner Consistent With State Constitutional Guarantees and State Statute.
 - Colorado Supreme Court Held That Dish Network Could Legally Terminate Mr. Coats for Use of Legalized Marijuana.

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Key Points to Remember

- Employers Can Continue to Enforce Drug Use Workplace Policies and Testing.
 - Medical Marijuana Does Not Need to Be Accommodated in the Workplace.
 - If Approved, Recreational Marijuana Use Does Not Need to Be Accommodated in the Workplace.
- Do Not Do Drug Testing Without a Policy in Place and Know Legal Limitations.

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Thank You

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CPAAC Fall 2016 Meeting

RESTAURANT INFORMATION

Wednesday, September 28th, is a no host dinner.

The following options are easily accessible from the hotel:



Towne House Restaurant at
Wine & Roses
loditownehouse.com
2505 W Turner Rd, Lodi, CA 95242
(209) 334-6988



Yume Japanese Cuisine
2401 W Turner Rd Suite 222, Lodi, CA 95242
(209) 224-5169



Thai Spices
thaispices-lodi.com
2401 W Turner Rd Suite 224, Lodi, CA
95242
(209) 369-8424



Rosewood Bar & Grill
rosewoodbarandgrill.com 28
S School St, Lodi, CA 95240
(209) 369-0470

Speaker Bios

Sheri Benninghoven

Sheri Benninghoven, APR, is the former Communications Director of the League of California Cities, and one of California's most experienced public relations professionals in helping state and local governments develop strategic public communications programs.

Sheri has extensive experience and working knowledge of journalism, local government operations and finance, public relations and public affairs, State government, crisis communications, and communications research. A graduate of California State University, Fullerton with a degree in Communications and Public Relations, she also graduated from the Public Sector Marketing series from Public Technology, Incorporated (PTI) in Washington, D.C.

Sheri is a past member of the adjunct faculty of the University of Southern California, Annenberg School for Communication in Los Angeles. She joined the private sector in 1991 to start her own consulting firm after nearly two decades in local government public communications and media relations, specializing in helping state and local governments identify messages and communicate effectively with target audiences. She is a former Vice President/Group Manager for Ketchum Public Relations (Los Angeles/Sacramento), the world's fifth largest public relations firm. She founded their Public Sector Marketing Group and also created their California Technology Practice Group. Her technology clients ranged from Packard Bell, NEC and Sun to Mattel's Barbie CDs, Encyclopedia Britannica's CD launch and NetRadio.

Sheri also served as Public Information Officer for the City of Anaheim, preparing and implementing communications plans for the city and each city department, including Anaheim Stadium, the Anaheim Convention Center, the Anaheim Redevelopment Agency, and two city-owned golf courses. She has extensive crisis communications experience, serving on the front lines handling incident communications for a myriad of disasters, from wildfires and urban fires to hazardous materials spills and hostage incidents.

She is a past president of the California Capital Chapter of the Public Relations Society of America, from which she's accredited; a member and past board member of the California Association of Public Information Officials (CAPIO) and a recipient of their lifetime achievement award; is a founder/past board member of the City-County Communications and Marketing Association (3CMA); and was a founder of the California Specialized Training Institute's (CSTI) crisis communications program.



Lisa S. Charbonneau

Lisa represents and advises Liebert Cassidy Whitmore clients in all matters pertaining to labor and employment law. She represents LCW clients in employment litigation throughout the state and advises clients on issues ranging from state and federal wage and hour law compliance to the interactive process to the mandates of the Meyers-Milias-Brown Act.

Lisa has appeared in state and federal courts throughout the Bay Area, as well as before the California Labor Commissioner, the Equal Employment Opportunity Commission, and the California Commission on Teacher Credentialing. Prior to joining LCW, Ms. Charbonneau represented private employers and public and private employees in litigation matters ranging from wage and hour class actions to public employee dismissal proceedings to individual discrimination lawsuits.

Gage C. Dungy

Gage provides management-side representation and legal counsel in all matters pertaining to labor and employment law for public sector employers throughout the State of California, including cities, counties, and special districts, among others.

Gage is experienced in representing and advising employers on various labor and employment law issues, including matters pertaining to employment discrimination/harassment/retaliation, disability accommodation and family/medical leaves of absence, wage and hour law, employee discipline and due process, the meet and confer process, labor relations and negotiations, and the preparation of employment guidelines and policies. Gage represents a range of employers not only in court, but before the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the Public Employment Relations Board, the California Unemployment Insurance Appeals Board, the Workers' Compensation Appeals Board, the Department of Labor and the California Labor Commissioner.

Gage has served as chief negotiator for public sector agencies in labor negotiations with their employee organizations, including both miscellaneous and safety employee units covered under the Meyers-Milias-Brown Act (MMBA). Based on this experience, he is very familiar with the relevant laws and strategic considerations related to the representation of public sector clients at the bargaining table, including the impact of the MMBA's recent impasse factfinding obligations.

Gage is a popular speaker and trainer and has presented numerous presentations, preventative trainings, and workshops for employers, agencies, and trade associations on the following topics, among others: Preventing Workplace Harassment, Disability and Leave Laws, Performance Management,

Labor Relations and the Meet and Confer Process (MMBA), Employee Discipline, Employee Performance Evaluations, Generational Diversity and Succession Planning, Ethics in Public Service, Brown Act/Public Records Act, Annual Audit of Personnel Rules, Public Safety Employment

(POBR/FBOR), Embracing Diversity, Wage and Hour Laws, and Legal Issues with Reductions in Force.

Carl Fessenden

Carl Fessenden joined Porter Scott in 1994 and has been a shareholder since 2000. Carl's practice focuses on representing public entity clients throughout northern California. Primarily, he defends those that find themselves the subject of a lawsuit especially those that involve employment, civil rights, dangerous condition and contract claims. Carl graduated with majors in Political Science and Communications from UC San Diego in 1988 and McGeorge School of Law in 1992. He has four adult children and lives with wife, Betsy, in Rocklin.

Jonathan Fraser Light

With over thirty years of experience, Jon offers employment counsel and training programs to companies of all sizes to reduce liability and protect against lawsuits. Jon has shared his expertise with clients through:

- Periodic employment law updates and free roundtable discussions for small groups
- Sex harassment avoidance training for managers and staff
- Management strategies for hiring, layoffs, reviews, discipline and terminations
- Strategies for protection of proprietary information and trade secrets
- Jon enjoys a stellar and long-standing reputation as a skilled trial attorney. His employment case notes as sole or lead trial attorney include a variety of successful matters:
- Two-week jury trial in Santa Barbara on behalf of a large national title company accused of discrimination and wrongful termination. 11-1 verdict in favor of client.
- Three-week jury trial in Ventura on behalf of an international aerospace manufacturer and its management employee who were sued for sex harassment.
- Prevailed in a wrongful termination and slander jury trial on behalf of a Ventura County physician.
- Used effective motion practice to demolish a \$4M lawsuit against a publicly-traded employer by an employee claiming breach of contract in Orange County.



- A San Diego County trial resulted in a complete defense verdict in a race and sex discrimination action filed against a Los Angeles-based national corporation.
- Two successful jury trials in San Luis Obispo and Santa Barbara Counties on behalf of a large international retailer, in which plaintiffs sought damages for wrongful termination and sex harassment.
- Four months in trial as lead counsel culminating in a successful settlement for a farming family that was a focal point of the Oxnard Dunes Toxic Waste Litigation, the largest civil case in Ventura County history.
- Jon has proven successful in a variety of litigation matters outside the employment arena as well:
- A successful will contest on behalf of the sister of the decedent, who purportedly executed a deathbed will in favor of his estranged wife. Despite an attorney and a doctor claiming that the decedent was competent, we succeeded in invalidating the deathbed will and recovering over \$350,000 in real and personal property for the sister.
- Successful verdict on a seven-week jury trial on real estate fraud and misrepresentation claims against a large national real estate broker and its agents.
- Trial court judgment in favor of a publicly-traded real estate investment trust in a shopping center breach of contract claim filed in Los Angeles.

Mike Pott

Mike Pott is the Chief Claims Officer for CSAC-EIA. He has served in this capacity since January 2015. Prior to that, he was a shareholder with the Sacramento law firm Porter Scott for 17 years, specializing in employment litigation and civil rights cases. Mike is a graduate of UC Davis and obtained his JD from Lewis & Clark College. In his spare time, Mike coaches his children in youth sports and serves as the President of the Cal Ripken Baseball League in Elk Grove.

Victor J. Reyes, MBA

Mr. Victor Reyes is an Associate Partner in IBM's Talent & Engagement practice, where his focus is on helping organizations transform their workforce to drive optimal performance and productivity; improve the strategic impact and efficiency of their human resources (HR) function; and address people and organizational issues associated with major projects and transactions.

Mr. Reyes also has significant background in global sourcing and shared services; program management; change management and communications; mergers, acquisitions, and divestitures; and process improvement across a range of front and back office areas. He has served clients in the Americas, Europe, and Southeast Asia and across multiple industries, including energy, financial services, telecommunications, healthcare, aerospace, and real estate.

Prior to joining IBM, Mr. Reyes was a partner at KPMG, where he founded and led the US HR Optimization practice, and was a senior engagement manager with Wipro Technologies and American Management Systems. He also held sales, marketing, and product management roles at AT&T.

Over the years, Mr. Reyes has been active as a Big Brother, a mentor with Capitol Partners for Education, and a pro bono consultant to non-profits with Compass. He holds an MBA from Harvard Business School and a BA in Government from Harvard College, and is a certified Senior Professional in Human Resources (SPHR). Born in Teaneck, New Jersey and raised in Dallas, Texas, he and his wife now live in Washington, DC.

Scott Summerfield

Scott Summerfield is an expert in public agency strategic communications with nearly two decades of award-winning public information/public participation experience, along with tenures at several other organizations focused on community issues. Scott specializes in assisting organizations with their communications plan development and training programs, and supervises SAE Communications' San Francisco Bay Area activities from his Pleasanton office.

Scott is the former Public Information Officer for the City of Newark and managed the largest grant program in League of California Cities history, supervising a team of nine consultants throughout the state who worked with local communities to implement waste prevention public education and public participation projects.

Community meeting facilitation and structuring of public input processes are a cornerstone of his municipal background, and Scott's public participation approach of identifying all possible affected audiences and then creating a communications program to reach each audience member has served his organizations well.

Scott also served as Director of Communications for the Oakland Chamber of Commerce. The Oakland native is a graduate of San Diego State University with a bachelor's degree in Telecommunications/Film.

Scott is a past president of the California Association of Public Information Officials (CAPIO) and recipient of their lifetime achievement award; a board member of the Bay Area Sports Hall of Fame; a former executive board member of the City-County Communications and Marketing Association (3CMA); a board member of the Bay Area Cable Excellence Awards; a guest lecturer at the University of Southern California, Annenberg School for Communication in Los Angeles; and is a crisis communications instructor at the California Specialized Training Institute.

