SCHECHTER BENEFITS ADVISORS | UNCOMMON SOLUTIONS to Design, Educate & Manage

HR&BENEFITS UPDATE

May/June 2015

Seven Steps to Prepare Employees for Organizational Change

HUMAN RESOURCES

Only 54 percent of change initiatives are successful.* The primary reason for failure is "change fatigue," which often includes a lack of organizational prioritization and management surrounding the change.

Change is stressful. When businesses execute organizational change, employees need leadership, communication, support and follow-through. These will help avoid the "people issues" that arise when jobs change, employees need new skills and workers are uncertain. Stop employee uncertainty by preparing all levels of the organization for change before, during and after an organization change. Here's how:

Step 1: Be Proactive

Dealing with issues reactively on a case-by-case basis slows change, hurts morale and puts positive change results at risk. Instead, think proactively. Employ a formal approach for managing change, beginning with the leadership team and then engaging key stakeholders and other leaders. Plan early and be ready to adapt as often as necessary as change moves through the organization. This process requires as much data collection and analysis, planning and implementation discipline as does a redesign of strategy, systems or processes. Integrate your change management approach into program design and decision making before you even get started to inform and enable strategic direction. Your strategy should be based on a realistic assessment of the organization's history, readiness and capacity to change.

Step 2: Lead by Example

Staff will turn to senior leadership team for strength, support and direction to ease the uncertainty of change. Leaders must embrace the new approaches first, to challenge and motivate the rest of the institution. They must speak with one voice and model desired behaviors. The executive team also needs to understand that although it looks united, it's made up of individuals who are experiencing the stress of change. Leaders should support each other.

Step 3: Assign Local Leaders

When central leadership is aligned and committed to change, the organization will be positioned for success. Local managers can then model changes to ensure that the rest of the company follows in the same direction. Change efforts must include plans for identifying leaders throughout the company and assigning responsibility for design and implementation to specific site "owners" or project leads so that change cascades through the organization. Provide training to these leaders to help them implement assigned program components. At each level of the organization, leaders must support the company's vision, be empowered to execute their specific mission and feel motivated to make change happen.

Step 4: Sell the Change, Don't Just Force It

Employees may question why and to what extent change is needed, whether the company is headed in the right direction and whether they want to personally commit to making change happen. They'll look to the senior leadership team for answers. Leaders should be prepared to articulate a formal case for change verbally and with a written vision. A strong case for change should:

- Articulate a compelling need for change
- Demonstrate faith that the company has a viable future and the leadership to get there
- Provide a road map to guide behavior and decision-making
- Be customized for various internal audiences, describing the pending change in terms that matter to individuals

During the transition, leaders must be advocates who create a critical mass of employees in favor of change. Leaders can give employers a sense of ownership by involving them in the process of identifying problems and crafting solutions. Leaders should reinforce this ownership with incentives and rewards.

"Seven Steps to Prepare..." continued from Page 1

Step 5: Communicate, Train and Listen to Feedback

Change agents, beware! Leaders often make the mistake of believing that others understand the issues, feel the need to change and see the new direction as clearly as they do. But more communication is needed. The best change programs reinforce core messages through regular, timely communication that is both inspirational and practical. Communications should give employees the right information at the right time and should solicit employee input and feedback. Use multiple, redundant channels such as emails, staff meetings, newsletters, posters, training sessions and webinars to make sure the message is heard loud and clear.

Step 6: Stay Light On Your Feet

No change program goes completely according to plan. People react unexpectedly, budgets and priorities change, resistance falls away and the external environment shifts. Managing change effectively requires continually reassessing its impact and the organization's willingness and ability to adopt the next wave of transformation. Leaders should solicit feedback at every stage, stay on top of progress and be prepared to make adjustments to maintain momentum and drive results.

Step 7: Understand That It's Personal

Change is both an institutional journey and a very personal one. People spend many if not most of their waking hours at work and many think of their colleagues as their second family. Individuals need to know how their work will change, what is expected of them during and after the change, how their performance will be evaluated and what success or failure will mean for them and those around them. Employees want to know what resources (training courses, mentorships, classes, coaching) are available to help them be successful.

Summary

Team leaders should be as honest and explicit as possible. Employees will react to what they see and hear around them, and they feel that they need to be involved in the change process in some way. Leaders should provide highly visible rewards, such as promotions, recognition and bonuses, as reinforcement for embracing change.

There is no single methodology that will fit every company. However, executing a well-considered, well-planned process will drive a successful organizational change.

* DeAnne Aguirre. "How to Lead Change Management." *strategy+business*. June 9, 2014.

Content and Frequency of Retirement Plan Committee Meetings

RETIREMENT

Many retirement plan and other committees wonder, "How frequently should we meet?" Quarterly meetings are sufficient for most committees and most plans. Plans with minimal activity may even be satisfied with annual meetings. When setting meeting schedules, make sure you meet often enough to handle the items critical for timely plan management.

The purpose of retirement plan committees is to oversee investment and administrative issues. Committees should be formalized via a written document, such as a committee charter, that identifies the members and establishes specific roles and responsibilities.

During each plan year the committee should:

- **Review and monitor the plan's investments.** This is pursuant to procedures contained in the Investment Policy Statement, including selection and replacement, when appropriate.
- **Review plan expenses.** The committee should understand and determine reasonableness of plan expenses. Recent litigation in this area has reinforced the primacy of this issue for fiduciaries. A complete fee analysis and benchmarking of providers should occur every three to five years.
- **Review plan services available and those currently being provided.** Review these concurrently with the expense review. Consider both quantity and quality of services when addressing the appropriateness of expenses. The breadth and scope of services are constantly expanding, and the committee should be aware of services that may produce a value-added impact on their plan.
- **Consider emerging trends, legislation and external/internal factors which may impact the plan.** Examples include the significant implications of recent litigation, Roth 401(k), asset allocation accounts (lifetime/lifecycle) and automatic enrollment and escalation functions.
- **Review plan demographics.** Do all interested parties understand and administer plan provisions properly? How do these provisions compare to industry norms or best practices guidelines? Do plan fiduciaries understand and practice their roles and responsibilities accordingly?

- **Review participant demographics.** Are participants in a position to retire well? Consider participation rates, average deferral rates, appropriate asset allocation, asset diversification and average account balances.
- **Review participant communication/education programs.** Fiduciaries are required to ensure that all participants have sufficient information to make informed investment decisions. Is there evidence that this is true? If not, what is the appropriate course of action?

To be a successful committee, pursue the above and other responsibilities with procedural prudence as required of ERISA fiduciaries. Investigate the issues, take the appropriate actions and document the entire process. Contact your plan consultant for assistance with any of the areas identified above.

Termination, Discharge: What Are the Requirements for Notice to Employees Over the Age of 40?

HUMAN RESOURCES

Question: We have a current employee who has been with the company for 8 years in a director role. We are considering outsourcing the work he does along with all IT work. I know we can go ahead and lay him off due to these business decisions and we would be putting together a separation agreement. My concern is that I read recently that anyone over the age of 40 should be given the separation agreement at least 21 days in advance of the separation. Is this information correct? We are concerned because he has security controls, and if we give him this advance notice, we are not sure what damage he might do to the company.

Response: If an employee is 40 years of age or older, any separation agreement that seeks to release claims under the Age Discrimination in Employment Act must contain specific language as required by the Older Workers Benefit Protection Act (OWBPA) in order to be a proper, valid and enforceable release (see **http://www.eeoc.gov/policy/docs/qanda_severance-agreements.html** for specific guidance). You are correct that an employee age 40 and older must be given 21 days to consider a waiver and release agreement, and then an additional seven days once signed (if signed within that time period) to revoke his or her signature and thus the contract itself. There are other requirements that must be satisfied when more than one employee is separating from employment (such as providing information about the ages and positions of employees impacted by a layoff and not impacted by the termination decisions, and a 45-day consideration period), but we assume from the inquiry that only one employee is at issue here. Employers are not required to provide employees under 40 with a specific amount of time to sign a separation agreement and there is no revocation period required in that situation.

As to your concern regarding providing "advance notice" to the subject employee, the 21-day waiting period is solely for purposes of the employee executing the separation agreement. In other words, the employer does not need to give an employee advanced notice as to his or her last day of work. The employer can stipulate in the separation agreement that the last day of work is effective immediately, requiring the worker to return all company property, assuming employment is at-will and no other contract governs the issue. The employee could still have the 21-day consideration period to decide whether to accept the terms of the separation agreement, though the employee would spend this consideration period at home or away from work as he or she would no longer be employed.

For more information on obligations under the OWBPA in severance agreements, please see **www.eeoc.gov/policy/docs/qanda_severance-agreements.html**. We also recommend that the employer consult with local counsel for guidance in drafting a separation agreement or for a review of a preexisting draft to ensure it meets the employer's objectives while remaining compliant with applicable laws.

Source: Enquiron HR & Employment Law HELPLINE Services for NFP Clients. www.nfphrhelpline.com. March 2015.

Compliance FAQ

With the Form 5500 deadline right around the corner for calendar year plans, what should plan sponsors do if they have not filed a Form 5500 in the past for their health and welfare plans?

Plan sponsors who have identified that they have not filed a Form 5500 – but should have – may take advantage of a correction program that allows filing delinquent Forms 5500 with reduced fines to bring the plan into compliance.

A plan that hasn't properly adhered to the Form 5500 filing requirement may take advantage of the Department of Labor (DOL) Delinquent Filer Voluntary Compliance (DFVC) Program, which is available to plans that voluntarily comply before being notified of a deficiency by the DOL. The DFVC program provides reduced penalties to such plans. Namely, the penalties may be reduced to $10 per day with a maximum limit of $750 for a small plan (one with less than 100 participants) and $2,000 for a large plan (one with 100 participants or more). If the plan is delinquent on multiple years' filings, all filings may be submitted at the same time, including the current year's filing. In this case, the small plan penalty is $1,500 and the large plan penalty is $4,000. Failing to file a timely report notice from the DOL will disqualify a plan from using the DFVC program. In effect, if a plan sponsor sends only one year's filing, and many years are missing, the risk of losing the ability to file under the DFVC program is heightened.

While the DFVC program penalties may seem steep, the DOL can assess and impose higher penalties for incomplete or otherwise deficient Forms 5500 and for any refusal or failure to file a required Form 5500. The DOL generally levies such penalties against the plan administrator, and the fine amount can be up to $1,100 per day starting from the date of the administrator's failure to file a proper Form 5500. In addition, any person who willfully violates the Form 5500 requirement may be subject to a fine of not more than $100,000, imprisonment for not more than 10 years or both. "Willfully" generally requires a finding of general intent — that is, that the person acted knowingly and voluntarily.

The DOL also contends that it is not subject to a statute of limitations with respect to Form 5500, so it can assess penalties in connection with previous plan years, reaching as far back as the 1988 plan year.

If a plan sponsor proactively recognizes that the DFVC program is an option for them (because the DOL has not yet notified them of a deficiency), then the plan sponsor can achieve significant savings in both penalties. Contact your advisor if you need assistance starting the DFVC process.

Need more information?

For information on any of the articles in this newsletter, please contact your benefits advisor.

NFP®