



O. M. H. R. A. E C H O
THE ONTARIO MUNICIPAL HUMAN RESOURCES
ASSOCIATION NEWSLETTER

PRESIDENT'S MESSAGE

Summer 2013
Kandy Webb
County of Norfolk

Planning is well underway for the OMHRA 50th Anniversary celebration which will take place at the Fern Resort on September 11-13!

The Human Resources role has undergone a significant evolution since its origin approximately a century ago, prior to the formation of OMHRA. This transition has resulted in the requirement for today's human resource practitioners to not only be professional and hardworking but also innovative and strategic.

In the early 1900's Frederick Taylor introduced the scientific management model in which he pioneered time and motion studies as well as a rudimentary core competency framework.

In the 1920's and 1930's the Human Relations Movement focused on employer from the employee's perspective, analyzing the correlation of group behaviour and worker's feelings with productivity and morale.

The third phase of the continuum was introduced in the 1960's, when our Association was formed. This phase resulted from the inundation of government legislation which impacted human rights, wages and benefits, working conditions and occupational health and safety. No doubt it was this evolving requirement for expertise that led those first nine personnel employees from a various municipalities to meet to share information and discuss emerging trends and legislation. From those discussions the Ontario Municipal Personnel Association (OMPA) was formed.

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In recognition of the growing use of the term *Human Resources* rather than *Personnel*, the name of the association was changed to the Ontario Municipal Human Resources Association (OMHRA) in 1994.

Topics at 50th anniversary conference will include a panel discussion which focuses on the HR role from the CAO perspective, OMERS and AODA updates and the ever popular Legal Update.

The Fern Resort is being booked on a first-come, first-serve basis, with overflow accommodations at the Best Western Couchiching Inn.

The months ahead will prove to be very busy and exciting as we finalize details for the 50th Anniversary Celebration. The Board sincerely hopes you can join us September 11-13 at the Fern Resort.

Planning for OMHRA's 50th Anniversary which will be held at the Fern Resort is in full swing. Please mark your calendars for September 11-13, 2013 when we will celebrate this great milestone for our Association. After all, doesn't everyone deserve an extravagant 50th birthday party?

Take care and stay cool !!

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FROM THE DESK OF ..

**Christine Ball
Executive Director**

It is hard to believe that 50 years have gone by, and not only has our association survived but it has thrived!

How many threats did OMPA have? The Anti-Inflation Board! Downsizing! Right-sizing! Municipal Amalgamations!! And that is just a few. Yet here we are having entered 2013 celebrating the strongest association ever. OMHRA today is vibrant, strong, well respected in the municipal world and we have more members than ever!

A milestone like a 50th anniversary certainly makes one look back, even to their own path, and how it led to OMPA!! In the late 1970's I remember making presentations to OMPA when I actually worked for OMERS as their Communications Manager (I made OMERS employee #20). Then I remember John Panunto asking me to join the OMPA Pension Committee in June of 1991 when I came over to municipal employment!! The rest, as they say, is history. I became a Board Member of OMPA in 1999. OMPA became OMHRA and I was honoured to serve as President in 2003 – 2005.

Many of our retirees and past presidents have responded to our invitation to attend the 50th anniversary celebration and, in actual fact, one of our founding members, Dennis Camm, will honour us with his and his wife's presence.

We hope you can attend and help us celebrate 50 great years !!



Simply put, your employer brand is the perception the world has about your organization as a good or bad place to work. Having a good employer brand means your organization is perceived as an employer of choice, known in your sector and region as a highly desirable place to work. Having a poor employer brand could mean losing star performers and experiencing an uphill climb to replace them.

Establishing your organization as an employer of choice will require a sophisticated strategy. It requires using an awareness of changing workplace considerations from the employees' perspectives to formulating a value proposition to employees that clearly answers the age-old question, "What's in it for me?"

The employer brand is made up of a constellation of factors that contribute to an employee's experience inside an organization. These include everything from the obvious (such as compensation and benefits) to factors which, while more subtle, profoundly affect an employee's quality of life after hire. Strategically shaping these factors can help retain strong performers while attracting new talent, by showing you've taken steps to create a work environment where they can thrive. Here is a brief outline of a few of the factors:

1. Examine each step of your hiring process to assure that it gives applicants an appreciation for what it would be like to work inside your organization. Your goals is to shine as an organization and create a positive experience during a prospective employee's job hunt.
2. Use highly validated job benchmarking and assessment tools to help hiring managers deploy employees in positions where they potentially have the biggest impact. We call this "job matching" for superior performance.
3. Consciously treat current employees as the internal customers they are, providing a value-added career experience and letting human nature take its course. Satisfied employees then become goodwill "ambassadors" who are a reliable source of high quality hires.
4. You cannot control what is being said about your organization in social media but you can substantially influence it by communicating the facts about life inside your organization and how employees feel about it. Evaluating and upgrading the employee value proposition is the indispensable first step to creating a favourable buzz about working for your organization.
5. Becoming known as an organization that makes it possible for employees to seamlessly fulfill one's work and family responsibilities while remaining healthy makes it near the top of job seekers' shopping lists.

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This is only an excerpt of a more extensive white paper by TTI Success Insights entitled, Employer Branding: Winning the Post Recession Competition for Talent. To read more about the points above as well as about: Expressing your organizational values; Leadership communication matters now more than ever; The curative power of professional development; and, Paying for health & productivity initiatives that pay off, send an email to employerbranding@prismgroup.ca and the white paper will be automatically emailed to you.

Prism Group Int'l has been a proud sponsor of OMHRA since 2008. We assist progressive municipalities and organizations to develop great leaders and great systems for great outcomes. Prism Group is a small boutique consulting and coaching firm with years of experience and deep roots in the broader public, not-for-profit and developmental service sectors. We offer a personal level of service that sets us apart from many but with the capability to effectively and affordably deliver practical insights and solutions for your municipality's business needs. You can contact us at info@prismgroup.ca or by phone at 866.554.5547.

Understanding Drug Formulary Options

**Abbi O'Neill, BSW, CEBS
Account Executive
Mosey & Mosey Benefit Plan Consultants**

I think most of us would agree that one of the challenges employers face is to provide a comprehensive group benefits program (often within the framework of collective bargaining) that strives towards sustainability and responsible costs.

If it hasn't started already; at some point, plan sponsors will consider various options for cost control ranging from defined contribution plans, to co-payments and everything in between.

Plan sponsors (and plan advisors) are constantly on the receiving end of some scary statistics about our aging population and there is certainly no shortage of information when it comes to benefit trends and utilization statistics. While it is important to have some understanding of the industry landscape, that is not the purpose of this discussion. Rather, the purpose here is to cultivate some interest in just one cost containment strategy; Managed Drug Formularies. Further, instead of over complicating concepts and using inflated language (as admittedly is sometimes the tendency in the world of insurance) the idea here is to present a simple explanation of what drug formulary is and what some of the options are. No scary stats and no insurance jargon!

My Disclaimer:

Drug Formulary Management is indeed complex. This article is not intended to replace the need for each plan sponsor to review their drug data and the options offered by their provider. Additionally, drug formulary management represents a big shift away from the traditional plan and therefore would require careful consideration and lots of lead time for stakeholder engagement. Finally, drug formulary is but one possibility and should be considered against all cost control options including those aimed at prevention and wellness.

What is Drug Formulary?

Drug Formulary is basically the way the insurance company determines which drugs will be considered eligible under your plan. New drugs are consistently being released and approved for sale. As a result, insurance carriers are constantly making changes to your drug formulary.

Many (if not most) plan sponsors currently have what is referred to as an “open drug formulary.” (Yes, even those of you reading this who have a “generic” plan.) That means that as new drugs become approved and available for sale in Canada, by and large, they are automatically added to your list of eligible drugs. (There are some exceptions.) Think of it as a type of negative billing; you as the customer buy a drug plan and agree that new drugs will be eligible for reimbursement under the plan automatically. You must either absorb the cost of any claims or specifically decline it in advance.

Drug Formulary Management is a way to put some control in this process and be selective about which drugs will be eligible and at what level of reimbursement.

This is where it can get scary. Drug coverage is fundamental to the group benefits program and often is articulated in the collective agreement. This doesn't mean we can't talk about it however, so don't leave me now! There are baby steps!

The following is not an exhaustive list and certainly options will vary by carrier. The intent is to provide the basics as a starting point for discussion. Ultimately, an in-depth review of the applicable options is required but in the meantime, what follows is a managed drug formulary tutorial.

Prior Authorization

Prior authorization means coverage for certain drugs is pre-approved based on medical criteria. Prior Authorization typically applies to those therapies that are considered specialty drugs and are very costly (biologics are an example). Many plans automatically have a prior authorization process built into plan design but some do not.

Mandatory Generic (With Exception Process)

Many employers have their plans designed to cover generics as the preferred option. This is always a good thing because generics typically cost *a lot* less than the brand name equivalent drug. However, these plans are set up so that if the doctor writes “Do Not Substitute” on the prescription, the pharmacist will typically dispense the brand and the plan will reimburse the brand cost. A true mandatory generic plan will put some rigor to this process so that brands are NOT reimbursed unless the plan member applies and is approved for an exception by the insurance provider. To be approved for an exception, the doctor completes a form to explain why the patient cannot tolerate the generic and the insurer will either approve or decline the exception request.

Defined Drug Formularies

Most of the carriers have some version of a defined drug formulary. Think of this as simply a list of drugs that are either covered or not. As drugs are approved for sale in Canada, the medical consultants that insurance carriers employ will make an eligibility decision about each drug. If the drug under consideration has been proven effective, it may be added as an eligible drug. On the other hand, if studies show the drug is no more effective than a drug that is already available with a lower cost, it is *not* added to the list of eligible drugs. The Ontario Drug Benefit is an example of a defined drug formulary. In this case, the provincial government review committee makes a coverage decision about each drug.

The drug Nexium is an example of a drug that is often not covered under defined drug listings because there are alternatives that cost significantly less and have been shown to be just as effective.

Tiered Formularies

Tiered formularies basically divide drugs up into categories with different levels of reimbursement. Tiers motivate employees to select lower cost drugs because it means they are out of pocket less, or, depending on how the tiers are designed, not all.

Although there are many options, an example might look like this:

Tier One: Lowest Cost Drugs reimbursed at 100%

Tier Two: Preferred Brands reimbursed at 70%

Tier Three: Non Preferred Brands: reimbursed at 40%

Group Benefits Coles Notes

-for most employers, extended health and dental costs represent the bulk of total premium dollars

-typically, the single biggest driver of benefit costs is drug claims

-extended health and dental are referred to as experience rated benefits because claims utilization determines the cost

-if we start with the understanding that drugs are a main cost driver, any discussion around cost containment should consider drug formulary

For example, let's consider Nexium under a three tiered formulary. Instead of Nexium just flat out not being covered (as would be the case under a defined drug formulary), it could be covered under tier 3 at only 40% reimbursement. This means the plan member can have Nexium if they choose, but they must pay 60% of the cost.

So What?

At the end of the day, drugs are a huge driver of your benefit costs. Talk to your benefit consultant. Review your drug data. Explore the formulary options offered by your provider. Let's start the conversation! Some version of a managed drug formulary may play an important role in striking the balance between a comprehensive benefit offering and sustainable costs.

Dr. Eva Olsson – A Legacy of Caring, Compassion and Character

This year the County of Wellington invited Dr. Eva Olsson to come and speak to the County Managers during our annual professional development retreat. Eva is a holocaust survivor, and shares with her audience the horrific power of hate and bullying and the need to stop it wherever it occurs. Her message resonates with both the young and old; being a by-standard to bullying is equal to being the bully, and it is our responsibility to practice acceptance and inclusion. Eva has visited schools, prisons, churches, the armed forces, police forces, and even Queen's Park and the United Nations, reaching more than a million people. She finds purpose and strength in the hope that at least one person can learn from her experience. Our staff had very positive feedback to Eva's presentation:



"Such a remarkable lady! Such hardship and yet such strength and compassion. We are so very fortunate to have been in her presence."

"Words cannot express how powerful Eva's messages were and how we still have a long way to go. Intolerance, bullying, and hate is something that effects everyone and we can do our part on not being the bystanders who allow it to continue."

"I really enjoyed Eva's presentation, an inspiring lady with a strong message. Not only is she promoting anti-bullying, but is living proof people can overcome horrific circumstances and still have a positive attitude towards life."

"Eva's presentation was very candid and raw. Her story was sad and her resiliency, inspiring."

"Her story and the lessons on acceptance and compassion will stay with me....."

Eva has written several books, recorded an audio book with her son, as well as produced her own movie *Stronger Than Fire: The Eva Olsson Story* that follows her first time back, after 60 years, to her childhood town and the tragic journey of her past as she pilgrimages along the same path her and her family took during the Holocaust. Several staff have since read her novels and also watched the film, extremely moved by her life.

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Drug and alcohol testing: How far can an employer go?

By Thomas Agnew and Michelle Alton, Hicks Morley Hamilton Stewart Storie LLP

A recent Supreme Court of Canada decision will be of interest to any employer who has considered the issue of drug and alcohol testing of employees. In Irving Pulp & Paper, the majority of the Supreme Court upheld an arbitration award that concluded random alcohol testing in a safety sensitive workplace was not justified as there was no evidence that there was an existing problem with alcohol abuse. Although the arbitration decision focused on random alcohol testing, the case offers some helpful comments on an employer's general ability to implement random drug and alcohol testing in a unionized workplace.

Background

The employer developed a drug and alcohol testing policy in 2006 that was subsequently challenged by the union. The only aspect of the policy that was before the Supreme Court was the one that required mandatory random alcohol testing. The policy subjected 10 percent of employees working in safety sensitive positions to random testing throughout the year.

A majority of the arbitration board found that there was no evidence that there was a particular problem with alcohol abuse in the workplace and that there had only been eight alcohol-related incidents at the workplace over a 15-year period. The majority found that the expected safety gains to the employer from implementing random alcohol testing ranged from uncertain to minimal, while the impact on employee privacy was severe. As a result, the majority of the board found that the policy was unjustified and struck it down.

On judicial review, the arbitration decision was overturned on the basis that it was found to be unreasonable in light of the dangerous nature of the workplace. The Court of Appeal upheld the judicial review finding.

The Supreme Court's Decision

The majority of the Supreme Court (the "Majority") found that the legal issue at the heart of the case was the scope of management's unilateral rule-making authority under a collective agreement. The Majority found that any rule or policy unilaterally imposed by an employer and not subsequently agreed to by a union must be consistent with the management rights provision of a collective agreement and be reasonable.

In assessing the reasonableness of a drug or alcohol testing policy, a "balancing of interests" approach is required, which balances the right of the employer to ensure a safe workplace with an employee's right to privacy. The Majority noted that when applying this approach, arbitrators have typically found that drug or alcohol testing is permissible in dangerous workplaces in three situations: (1) where there is reasonable cause to believe that the employee was impaired while on duty;

(2) where the employee was involved in a workplace accident, near miss, or some other dangerous incident; and (3) where the employee is returning to work after treatment for substance abuse.

The Majority went on to find that arbitrators have “unilaterally rejected” policies implemented by employers that subject employees in dangerous workplaces to random testing as an unjustified affront to the privacy of employees. Random testing for drugs or alcohol has only been allowed by arbitrators where there is evidence of “an enhanced safety risk,” such as evidence of a general problem with substance abuse at a particular workplace.

The fact that a workplace, or a particular job, may be dangerous is relevant to the inquiry, but will not justify a policy that requires random testing without further evidence of an enhanced risk. The Majority found that an arbitrator has never found that a dangerous workplace is automatic justification for the unilateral imposition of unfettered random testing with disciplinary consequences.

The Majority agreed with the majority of the arbitration board that the safety gains to management from random testing were minimal at best while the impact on employee privacy was significant. In light of this, the Majority agreed with the majority of the arbitration board that the policy requiring random testing was an unreasonable exercise of management rights and should be struck down.

Significance of the Court’s decision

The issue of drug and alcohol testing has been disputed in a number of arbitration cases and is an issue that many employers struggle with. The Majority’s decision brings some much needed clarity to this issue.

The Majority confirmed that drug and alcohol testing is presumptively permissible where there is reasonable cause to believe an employee is impaired at work, where an employee is involved in an accident or near miss, or where an employee is returning from treatment for a substance abuse problem. Of course, testing in any of these situations will only be permissible where the employee is working in a dangerous work environment.

Beyond the three scenarios outlined above, the Majority commented on the state of the law with respect to an employer’s ability to implement random testing. Although the policy before the court dealt with random alcohol testing, the Majority’s comments on random testing appear to be equally applicable to both drug and alcohol testing. The Majority confirms that random testing will only be allowed in narrow circumstances. Establishing that an employee works in a dangerous environment or in a safety sensitive position is not enough to justify random testing. There needs to be an enhanced safety risk, such as evidence of a history of substance abuse at a particular workplace, before random testing will be allowed.

Several municipal employers have developed drug and alcohol testing policies as a means to ensure the health and safety of their unionized employees and members of the public. Municipal employers who have yet to develop such a policy should consider the recent development in the law when deciding on the scope of any potential policy. Municipalities who already have policies should consider the Majority's recent decision to ensure existing practices are compliant with the current state of the law.

In terms of municipal non-union employees, the implications of the Majority's decision are not entirely clear at this time. Many of the non-union cases involving testing have arisen under human rights legislation. The analysis in those cases typically focuses on the issues of disability and accommodation. It remains to be seen whether the principles outlined in the Majority's decision will begin to be applied in the non-union context on a consistent basis.

Hicks Morley specializes employers in all areas of labour and employment law. Thomas Agnew and Michelle Alton specialize in labour and employment issues facing municipalities. If you have any questions about any workplace issue, please contact Tom at 416-864-7227 or Michelle at 416-864-7238, either of whom would be pleased to assist you.

**OMERS Pensioners:
A little later; A lot more**

**Bill Winegard
MROO**

The media have widely reported that the 2008 financial crisis affected people's thoughts of retirement. Low returns on private investments, layoffs and threats of layoffs in the private sector, slowing wage growth, fear... the result: employees delaying their retirements.

The facts - as collected through the annual Statistics Canada labour force survey - seem to be: somewhat yes and somewhat no.

The Table below shows a dramatic drop in the average age of retirement between 1978 and 1998, particularly in the public sector (retiring on average almost 6 years earlier, encouraged by widespread early retirement incentives) but also in the private sector.

But by 2007, the trend, particularly in the public sector, had already started to reverse. By 2012, the average age of retirement had increased even more significantly, in both public and private workplaces.

Undoubtedly financial fears were a big part of it. But what other factors might have played a part? Skills deficits and the removal of early retirement incentives? The baby boom reaching retirement age but feeling healthier than an earlier generation? OMERS stats are not readily available, but OMERS staff say they have seen a similar trend in recent years.

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For self-employed Canadians, nothing much has changed in 35 years.
Average Age at Retirement

| Year | All Retirees | Public Sector | Private Sector | Self-Employed |
|------|--------------|---------------|----------------|---------------|
| 1978 | 65.0 | 63.7 | 65.2 | 66.2 |
| 1988 | 63.3 | 61.4 | 63.7 | 65.9 |
| 1998 | 60.9 | 57.8 | 61.6 | 65.4 |
| 2007 | 61.6 | 59.3 | 62.0 | 66.1 |
| 2012 | 62.9 | 61.0 | 63.3 | 66.4 |

Source: Statistics Canada, Table 282-0051: Labour force survey estimates, retirement age

Despite a trend to retirements at a somewhat older age, the pace of retirements in the OMERS Plan is rapidly picking up steam. The number of OMERS pensioners increased less than 3% between 2007 and 2008, but almost 5% between 2011 and 2012.

And there are more to come. More than 40% of OMERS active members are 50 years old or more.

| 31-Dec | OMERS Pensioner Headcount | Headcount Increase | Percentage Increase |
|--------|---------------------------|--------------------|---------------------|
| 2007 | 103,400 | | |
| 2008 | 106,400 | 3,000 | 2.9% |
| 2009 | 109,500 | 3,100 | 2.9% |
| 2010 | 113,600 | 4,100 | 3.7% |
| 2011 | 118,300 | 4,700 | 4.1% |
| 2012 | 124,000 | 5,700 | 4.8% |

Finally, the average pension being paid (bridge + lifetime) to a new OMERS pensioner has been increasing, albeit slowly since 2009. The average OMERS retiree is not rich but - with a stable indexed pension plan - very fortunate.

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| Average annual OMERS pension to those who became an OMERS pensioner in 2008 = \$ 24,700 |
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| Average annual OMERS pension to those who became an OMERS pensioner in 2009 = \$ 26,900 |
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| Average annual OMERS pension to those who became an OMERS pensioner in 2012 = \$ 27,600 |
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Source: OMERS 2012 Annual Report

Another reason to motivate your employees to move – Happiness! And it's easier than ever !!

**Holly Ewing-Murphy
Assistant VP, Retiree Benefits
ENCON Group Inc.**

These days, most employers recognize the value in helping employees enhance their physical and psychological health. Encouraging healthier lifestyles and behaviours can bring a wealth of benefits—healthier employees are happier and more productive. Small things can make a big impact in raising awareness and educating about healthy lifestyle behaviours. Everything from posters in your office washrooms to table tent cards in your lunchroom to email messages can raise awareness and knowledge of healthy behaviours.

This summer, encourage your employees to move

Strengthening the heart, building muscles, maintaining a healthy body weight, preventing health issues like diabetes and heart issues are all good reasons to exercise. And now, new research once again confirms what might be one of the best motivators yet to get moving: Happiness. Numerous studies indicate that moderate-to-vigorous exercise generates an “antidepressant” by way of the body’s release of “feel-good chemicals” that promote happiness. Recent research reveals that gaining this “happiness benefit” of exercise, as well as many of the physical benefits, is easier than people may think.

Happiness may be just 15 minutes away

Of course, the traditionally recommended 30 minutes of moderate-to-vigorous daily activity can only be a good thing; however, a new study provides some encouraging news. Turns out that even just 15 minutes of moderate-to-vigorous exercise can deliver the “happiness benefit.” Although, the researchers found that “more physically active people reported greater feelings of excitement and enthusiasm compared with less physically active people,” there’s a twist . . . they also found that people have more of what they refer to as “pleasant-activated feelings” on days when they are more physically active than usual.¹ Even if your employees don’t currently exercise, becoming more physically active than usual by adding just 15 minutes to their day may make them happier.

Take a stand for better health and happiness

Another study concurs that 30 minutes of moderate-to-vigorous daily activity is positive in many regards; however, there is yet another twist . . . this research found that even the 30 minutes “isn’t enough to mitigate the deleterious effects of prolonged sitting.” In fact, a series of studies continue to link excessive sitting to increased risks for developing diabetes, cancer, heart disease and stroke. Surprisingly, the remedy isn’t more exercise. Guess what? Even if employees don’t currently exercise, just standing up can have tremendous physical and mental health benefits:

- **Physical health benefits:** regardless of the amount of time spent exercising, research reveals that standing up “engages muscles and promotes the distribution of lipase, which prompts the body to process fat and cholesterol” and it “uses blood glucose and may discourage the development of diabetes.”² Other benefits include less back and neck pain, as well as enhanced muscle strength and improved weight management.
- **Mental health benefits:** standing has major benefits for the state of mind and productivity level by helping individuals feel energized with an enhanced sense of control, improved concentration and added self-confidence.

Encourage your employees to stand up

- The latest research reveals that to gain the mood-boosting effects of exercise, the old adage of taking “baby steps” may be more apropos than ever. As advised by an expert on workplace wellness, “In the workplace setting, it may be most important to ensure that people do not sit for prolonged periods of time *first*, then to stimulate overall increases in physical activity.” As they work toward incorporating moderate-to-vigorous activity into the day, they should consider standing up as a step in the right direction by making this their new daily mantra:

Stand, Stretch, Seek

- **Stand:** stand up at least once an hour; for example, while talking on the phone, reading hard copy information or even just while thinking.
- **Stretch:** then after you stand up, get your blood circulating by stretching.
- **Seek:** whenever possible, seek rather than sit; for example, walk down the hall to speak to a colleague rather than sending an email, and visit the photocopier regularly rather than doing your copying all at once.

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Sources: ¹ Amanda L. Chan, “Exercise Makes Us Happy - It's Science”, *The Huffington Post*, September 2, 2012; ²Science Daily, “Physiologists And Microbiologists Find Link Between Sitting And Poor Health”, http://www.sciencedaily.com/videos/2008/0610-stand_up_for_your_health.htm;

Supreme Court Rules that Random Drug and Alcohol Testing Policies Must be Supported by “Reasonable Cause”

**David I. Wakely
Filion Wakely Thorup Angeletti**

Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd., 2013 SCC 34 (CanLII)

On June 14, 2013, the Supreme Court of Canada released its decision in a case between Irving Pulp and Paper Limited (“Irving”) and the Communication Energy and Paperworkers Union of Canada (the “CEP”) regarding Irving’s unilateral introduction of random alcohol testing in the workplace. The Supreme Court upheld the arbitrations board’s decision that Irving had not presented sufficient evidence of a workplace alcohol problem to warrant random testing, despite the fact that Irving operated a dangerous workplace.

BACKGROUND

Irving Pulp and Paper unilaterally adopted a workplace policy (the “Policy”) that included mandatory random alcohol testing, by breathalyzer, for employees holding safety-sensitive positions in one of its New Brunswick paper mills. The CEP launched a grievance on behalf of an Irving employee, which argued that the Policy was unreasonable. Applying a balancing of interests approach, the majority of the arbitration board determined that Irving failed to establish a need for the Policy by demonstrating that the mill’s operations posed sufficient risk of harm to outweigh employees’ right to privacy. Specifically, the majority concluded that Irving had not adduced sufficient evidence of alcohol-impaired work performance to justify the Policy’s adoption.

Irving sought judicial review of the decision before the New Brunswick Court of Queen’s Bench, which allowed the application and quashed the arbitration decision. The Court of Queen’s Bench held that it was unreasonable for the arbitration board to require evidence of a history of alcohol abuse in the workplace given that the mill represented a dangerous work environment. The CEP’s appeal to the Court of Appeal was denied.

Both the Court of Queen’s Bench and the Court of Appeal supported Irving’s argument that the nature of dangerous or “safety sensitive” workplaces, such as railways, nuclear power plants, and Irving’s mill, was sufficient to warrant random testing, and that the employer was not required in such circumstances to demonstrate evidence of a pre-existing problem with drug and/or alcohol use in the workplace.

THE SUPREME COURT’S DECISION

Writing for a six judge majority, Abella J. stated that, while the dangerousness of a workplace is a relevant consideration when introducing a random drug and/or alcohol testing policy, the character of the workplace does not, in and of itself, allow an employer to unilaterally introduce random drug and alcohol testing, unless there is an existing workplace problem with substance abuse.

The majority of the Court stated that judicial decisions related to non-unionized environments were “of little conceptual assistance”, and instead relied upon what the majority viewed as an arbitral consensus that rejected unilaterally imposed random drug and alcohol testing policies. Interestingly, the majority did not differentiate between the arguably different standards applied to drug testing and alcohol testing in the

jurisprudence. Instead, the majority of the Court's ruling suggests that the need for testing, whether for drugs or alcohol, is to be assessed based on evidence suggesting that reasonable cause exists.

The majority found that where employees are engaged in "safety sensitive" work, testing will be appropriate in circumstances such as after a workplace accident or where an employee has a demonstrated problem with drugs or alcohol. For random drug or alcohol testing, reasonable cause generally must be established by evidence of an existing workplace problem with substance abuse. The majority stated that random alcohol testing in the absence of a demonstrated problem with alcohol use in the workplace may be possible "in extreme circumstances", but the Court did not elaborate further.

In Irving's case, the majority found that the employer had presented limited evidence of an existing workplace problem and agreed with the arbitration board's finding that the lack of any positive alcohol test results in the two years prior to the Policy's introduction suggested that, in fact, no workplace problem existed. As a result, the majority of the Court found that the arbitration board made a reasonable decision when it concluded that Irving's expected safety gains were minimal and were outweighed by the Policy's impact on employee privacy. The majority of the Court concluded that employers may impose random testing in dangerous workplaces only where it represents a proportionate response in light of both legitimate safety concerns and privacy interests and that:

[where] the employer proceeds unilaterally without negotiating with the union, it must comply with the time-honoured requirement of showing reasonable cause before subjecting employees to potential disciplinary consequences. Given the arbitral consensus, an employer would be justifiably pessimistic that a policy unilaterally imposing random alcohol testing in the absence of reasonable cause would survive arbitral scrutiny. [At para. 53]

The Supreme Court's decision also included a lengthy dissenting opinion written by Justices Rothstein and Moldaver, with Chief Justice McLachlin concurring.

CONCLUSION

This decision should serve as a caution to employers intending to unilaterally introduce drug and/or alcohol testing policies. Among other things, the Court's decision suggests that such testing will only be reasonable in "safety sensitive" environments and, even then, the testing must be supported by the presence of "reasonable cause". In all but the most extreme cases, where the testing is intended to be randomly applied in the workplace, the employer has the onus of demonstrating that a pre-existing substance abuse problem exists in the workplace, and that random testing is a proportionate response in light of the safety-sensitive nature of the workplace.

At one of MROO's Retirement Planning seminars recently, a tired employee, just off shift from a long-term care home, told us that she wasn't sure she could afford to retire but she better think about it since OMERS was going to cut pension benefits. A member of the union local executive added that a lot of them were now thinking earlier retirement because management had told them that OMERS was going to cut benefits.

First, this information was incorrect.

Second, it was harmful - unnecessarily so - to employees.

Third, it doesn't do our pension plan any good.

Finally, could HR folks have helped to prevent the spread of this misinformation?

Same time next year

Every Spring, the OMERS Sponsor Corporation (SC) goes through a process of soliciting proposals from Board members and stakeholders for OMERS Plan design changes. The SC Board consists of seven members appointed by Plan member sponsor groups (including one retiree appointee) and seven members appointed by employer sponsor groups. A two-thirds supermajority vote is required for any such proposals to be approved.

Although not always the case, every year it seems, member-appointed SC Board members propose changes that would improve benefits while employer-appointed Board members propose changes that would reduce costs. Rarely does either get approved.

It was so again in 2013. Proposals were made to reduce the 100% inflation indexing and to reduce the 2% pension benefit accrual rate. Inaccurately (and I would like to think, inadvertently), internal memos were circulated in several municipalities warning that OMERS benefits "will" be reduced.

Wrong. On June 25, the OMERS SC Board met; they voted; nothing passed; NO CHANGE.

Who Benefits from Misinformation?

The weary woman who struggled from her overnight shift to our retirement planning seminar did not benefit from being misled about OMERS. Thousands of employees who received those internal memos were scared into thinking incorrectly that their pension plan was wobbling and their pension benefits were being reduced. No value to them.

Misinformation doesn't help OMERS either. Since 70% of our pensions rely on investment returns, maintaining OMERS' good reputation in financial circles is critical.

You can help ...

HR departments, as well as organizations like MROO, can help to cut mistruths off at the pass, before they do a disservice to employees, OMERS, and the credibility of

management. OMHRA members can help employees to get the real story. MROO can help to do the same for retirees.

The OMERS Client Services Team is always available to "tell it like it is". They are available over the phone, at face to face meetings at your locations, and through print/web updates. You know them: they are trustworthy. If changes had been approved, you and we would have known. There's also good information on the OMERS website at www.omers.com, and the OMERS Sponsors Corporation website at www.omerssc.com.

Check this out: <http://www.omerssc.com/PlanChanges/4783.aspx#?>

MROO is not saying that pension benefit changes could never happen. We all know that pension plans are being squeezed: volatile revenues, longer lives, baby-boomers. However, the law requires that any Defined-Benefit pension plan submit a strategy to bring its long-term (i.e. 50 or 60 years from now) actuarial liability projections into line with its long-term actuarial revenue projections. OMERS created a plan back in 2010 to bring its projections back into balance by 2025 or sooner.

So now, OMERS is NOT required to reduce future pension benefits and we hope they won't be. NO CHANGES were approved in 2013. NO-ONE benefits from allowing incorrect statements to spread.

SO, does it matter?

Has your organization recruited lately for any relatively basic positions? Truck driver, library clerk, data entry operator, custodian, aide in a long-term care home?

Were they under age 54 (i.e., will they turn 65 after March 2023) to whom OAS payments won't be available at age 65?

Were they already in their forties?

Odds are, here is what is likely when those employees turn 65...

1. they will be faithful workers and count their stars to be in a good pension plan
2. their backs will be sore, their knees will ache, it will be harder and harder to get out of bed
3. they will wish they could retire (and they probably deserve a break)
4. they won't retire until they are 67

Employer of Choice

D. Bruce Malcolm Managing Partner

Ravenhill Group Inc.

Canada's Municipal Recruiting Specialists

The term 'employer of choice' has become a popular phrase in recent years. The concept and its benefits - that employees will choose your municipality over others and choose to dedicate themselves to your community's success if your city measures up in their eyes - seems obvious.

Here are 8 things you can do that will help you to become an 'Employer of Choice':

1. Improve retention
2. Keep them motivated
3. Reward them when they perform well.
4. Recognize their contribution.
5. Hold them accountable.
6. Demonstrate that hard work pays off.
7. Involve them with changes...especially changes that affect the whole community.
8. Offer them flexibility in their work-life balance.

Do these things (detailed below) and you will have gone a long way to making your municipality an employer of choice.

Do these things (detailed below) and you will have gone a long way to making your municipality an employer of choice.

Retention, Are you interested in knowing what is really concerning your employees? Knowing what makes your staff unhappy is half the battle when you need to get a handle on employee job satisfaction, morale and positive motivation that lead to improved retention.

Take time to listen to staff and provide opportunities for them to communicate with the managers in the various departments of the town. If you create an environment where employees feel safe, they will tell you what's on their minds. The culture of your municipality needs to be one of trust if you want successful two-way communication.

Reward, Rewarding your staff for a job well done really works. Some municipalities successfully use the 'Employee of the Month' award. The award should come from management not from fellow employees. This is not a popularity contest. Most towns that use this idea will post the person's picture in a prominent area. The winner might also get a few perks for the month -- a parking spot up close to the entrance with a sign that says "reserved for employee of the month" is one good idea. Sometimes a small gift is given like a pen or coffee mug that says 'employee of the month'. Money is important, but survey after survey shows the greater importance of appreciation and reward.

Recognition, Like appreciation and reward, recognition and a fun work environment are essential in attracting and retaining great employees.

Recognition is not just a nice thing to do for people. Employee recognition is a communication tool that reinforces and rewards the most important outcomes your staff creates for your municipality. When you recognize people effectively, you reinforce, with your chosen means of recognition, the actions and behaviors you most want people to repeat. It is similar to reward only less official. It can and should happen spontaneously wherever a good job is being done. An email, a pat on the back or even a sticky note will often do the trick. Effective employee recognition is simple, immediate, and powerfully reinforcing.

Accountability, Holding employees accountable for the part they play within the municipality is one of the keys to their success as an employee. To some staff accountability is 'built in' and that makes a manager's job much easier. Others don't have it. It is the manager's job to lay out the expectations and set goals for staff. Spending time talking to your employees and providing feedback on what they are doing well and where they are falling short will improve their accountability.

Promotion, for some staff, getting ahead and rising through the ranks of the municipality is everything. They work hard in order to catch the eye of the boss and hopefully get a promotion. If you have not recently considered which of your staff members may be ready for advancement, do it now! Today, many municipal managers are more likely to promote from within than they were three years ago.

As the job market strengthens, your best employees may pursue jobs elsewhere if they perceive that their contributions aren't being valued or that there is no long-term potential with your city. Providing advancement opportunities for your staff will demonstrate that hard work and outstanding performance can and will be rewarded.

Involvement, you can never expect one hundred percent support from any employee who has not personally been involved in a change which had an impact on his work. In any change, especially ones that affect the whole municipality, it is impossible to involve every employee in every decision, however, you can be certain that when change really works, the organization has gone out of its way to involve as many people as possible, as early as possible, in the change process.

Flexibility in work-life balance, you may cringe when you hear the phrase "Work-Life Balance," that's because it is often seen as code for "work less." But you need to ask yourself if the need for greater balance between an employee's career and their other life is entirely negative. Viewed from a positive perspective, encouraging and sometimes insisting on Work-Life Balance can be one of your best tools to retain and motivate your employees.

These are your key areas for becoming an employer of choice. The best result you could have is your employees bragging that your municipality is a great place to work. People will believe staff before they believe what you say and write about yourself. Finally, don't just be a great employer let people know you are a great employer.

Peigi Ross of Dunsmore Wearing recently secured a thoughtful 34 page decision from Dr. Marcotte dismissing 5 grievances on behalf of 29 employees who were terminated by Pharma Plus while they were on long term disability. The decision is relevant for all municipalities. It supports employer action to remove from its rolls employees who have been away for a long time and from whom there is no evidence that a return to work in the foreseeable future is possible.

At termination, all the employees were in receipt of ltd benefits and continued to be eligible based on their ongoing disability in accordance with the terms of their ltd plan. However, the employer terminated their employment due to innocent absenteeism because they were each incapable of performing the essential duties of their specific positions and there was no reasonable expectation of return in the foreseeable future. Based on the frustration provisions of the Employment Standards Act, the employer paid out notice and severance pay entitlements and ended employment.

After a full review of cases, the arbitrator decided that being on ltd did not stop termination provided that the ongoing right to receive benefits in accordance with plan conditions was not ended by the act of termination of employment. However, Dr. Marcotte did warn that employers could be precluded from terminating employees if they had negotiated maintenance of other benefits for employees while absent on disability. In this case, he did not find any such restriction. The award reviews numerous examples which should be considered by bargainers as items to avoid in the future.

So, it is possible to close the employment status of long disabled employees. The case reference is Pharma Plus and U.F.C.W., William Marcotte, June 19, 2013.

And, and update from Dunsmore Law ...

Announced first at the OMHRA Bargaining Seminar in late June, Dunsmore Law has taken its team of four lawyers downtown to partner with Paul Wearing in the new work place management law firm Dunsmore Wearing LLP. Paul has developed a strong management practice over 35 years at the bar.

This partnership will be associated with Neal Sommer and James LeNoury, two other accomplished lawyers bringing together over 140 years of experience helping employers solve their work place problems.

The office will be in suite 4410 of the CIBC west Tower. However, as always the Dunsmore Wearing lawyers will be happy to visit you. All numbers remain the same. Email addresses now include Dunsmore Wearing in place of Dunsmore Law. The future is bright!

HR and Project Management – Getting the Foundation Right is Critical for Organizational Success!

Chris Peacock
Canadian Management Centre
CMC

Article is by Reg Scotland (PMP) and Rob Smith (PMP), Facilitators with Canadian Management Centre (CMC).

For HR professionals, projects are becoming increasingly common. In this time of do-more-with-less, strained budgets, constrained resources and change at an ever-increasing pace, projects must successfully meet their objectives, while respecting timelines and budgets.

Whether a new HRIS, revision of policies and procedures, or departmental reorganization all successful projects need a solid foundation. The Initiation phase forms this foundation, and doing things correctly here can set the project up for success. Of course, doing things inadequately will set the project up for the opposite!

Five steps are critical in setting the proper foundation for a project:

- Identifying stakeholders
- Verifying and validating early thinking
- Communicating
- Defining roles and responsibilities
- Identifying and engaging the sponsor

IDENTIFYING STAKEHOLDERS

A Stakeholder as defined in the *Guide to the Project Management Body of Knowledge* (published by the Project Management Institute) is someone who is impacted by the project.

Identifying these people needs to happen early. Too often, this is either not done at all, or done very superficially, which puts the project at potential risk of not understanding who is being affected by the project.

As the business environment has grown more interconnected, a change in one place may have impacts in many, making stakeholder identification a critical task in planning for success.

VERIFYING AND VALIDATING EARLY THINKING

One of the challenges HR Project Managers face is that often they are not involved in the pre-initiation, or even sometimes the Initiation phase of the project. So, when they get the preliminary plans they need to ask: “What are these objectives based on? What are these timelines based on? What are these financials based on?”

Successful projects operate with realistic objectives, timelines, and budgets along with resources available to ensure its success. Otherwise, the project is in danger of over-promising and then end up under-delivering.

COMMUNICATE, COMMUNICATE, COMMUNICATE!

Successful HR project managers are able to address the issues they typically face on projects through three basic strategies: influencing, negotiating, and more generally, communicating.

Typically, these are tools they use to get results through others and with others over whom they have no formal authority. Much of this depends on the interpersonal and communications skills of project managers, from face-to-face interactions to other verbal and written communications skills.

Fifteen years ago, a project manager's skill set was viewed as 50% technical, 25% communicative, 25% project management. Today these are recast as communication 50% while methodologies and technical are each 25%.

Everyone thinks "I've got good communications skills, after all I can write, I can talk." But most of us do not really understand how weak or strong our communications skills are. One of the most difficult things to do is to understand how others perceive us.

DEFINING ROLES AND RESPONSIBILITIES

An important issue is being identifying *who* is supposed to do *what*. As the project moves through pre-Initiation and Initiation to Planning, the roles and responsibilities of each of the people involved from our Stakeholder list – including the Project Manager and the project team – need to be clearly identified.

A **role** is "who does what", and a **responsibility** is "who decides what". So a role implies that there is some task to perform, while a responsibility implies that there is some decision that has to be made.

WHO IS THE SPONSOR?

Not long ago, attendees on one of our CMC courses told of a project they were on that had been going on for a year, and had so far spent n-million dollars, and they still don't know who the Sponsor is.

Yet in setting a project up for success, the sponsor plays two very important roles: providing or controlling the funding for the project and championing the project at higher levels in the organization. Without a Project Sponsor the project is at risk.

CONCLUSION

So in summary, for HR projects, it's enlightened self-interest to ensure a proper Initiation for the project. Meeting the five critical tasks is the first step in successful project completion.

Prevention is better than conviction
– Municipalities are not exempt.

Joy Vas, CHRP
Senior Consultant



Fines and Penalties for a violation of the Occupational Health and Safety Act

May 23, 2012 11:39 AM

St. Catharines, ON - The Corporation of the Town of Pelham was fined \$60,000 for a violation of the Occupational Health and Safety Act after a young worker was injured.

On August 25, 2011, summer students working for the Town were repairing the lids of catch basins, which are the parts of storm drains used to collect debris. One worker lifted the lid of a catch basin with a pickaxe so another worker could apply tape to the basin. While the second worker's hand was in the basin, the lid slipped from the pickaxe and crushed that worker's hand.

A Ministry of Labour investigation found that the workers did not have a direct supervisor and they had not been shown how to do the job before. Instead, they received instructions from a manager and were sent to repair the catch basins alone.

The Corporation of the Town of Pelham was fined \$60,000 for failing to provide adequate information and instruction to the workers on how to safely repair the catch basins.

The fine was imposed by Justice of the Peace Lena Mills. In addition to the fine, the court imposed a 25-per-cent victim fine surcharge, as required by the Provincial Offences Act. The surcharge is credited to a special provincial government fund to assist victims of crime.

<http://hrnc.blogspot.ca/2012/05/town-of-pelham-fined-60000-after-worker.html>

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