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The Peoplelink Online Newsletter

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9 Habits of Profoundly Influential People

Travis Bradberry, *Forbes*



Influential people have a profound impact on everyone they encounter. Yet, they achieve this only because they exert so much influence inside, on themselves.

We see only their outside.

We see them innovate, speak their mind, and propel themselves forward toward bigger and better things.

And, yet, we're missing the best part.

The confidence and wherewithal that make their influence possible are earned. It's a labor of love that influential people pursue behind the scenes, every single day.

And while what people are influenced by changes with the

season, the unique habits of influential people remain constant.

Their focused pursuit of excellence is driven by nine habits that you can emulate and absorb until your influence expands:

1 They think for themselves

Influential people aren't buffeted by the latest trend or by public opinion. They form their opinions carefully, based on the facts. They're more than willing to change their mind when the facts support it, but they aren't influenced by what other people think, only by what they know.

2 They are graciously disruptive

Influential people are never satisfied with the status quo. They're the ones who constantly ask, "What if?" and "Why not?" They're not afraid to challenge conventional wisdom, and they don't disrupt things for the sake of being disruptive; they do it to make things better.

3 They inspire conversation

When influential people speak, conversations spread like ripples in a pond. And those ripples are multidirectional; influencers inspire everyone

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ARE YOU SURE YOU WANT TO BE A MANAGER?

Renowned restaurateur Danny Meyer likes to tell newly promoted supervisors that they have just been given the “gift of fire.” As a boss they now have a new and potent power, but Meyer wants to ensure they understand the appropriate — and inappropriate — uses of this gift. Fire, Meyer explains, can be used to warm and comfort. It can be used to illuminate darkness. It can be used to render food more nutritious and pleasing. When stoked into a campfire, it provides a place for people to convene. And every once in a while, it is used to scorch — as when a leader speaks painful truths to others.

I’ve sat with many recently promoted leaders over the years, some of whom wondered what they had gotten themselves into. I’ve likewise participated in the deliberations of some who were ambivalent about taking on a new position and turning up the heat in their own lives. Here is some counsel on what to consider before you make the leap to manager.

Count the cost. It’s fun to play on a bigger stage. More pay is nice. Taking on more complex problems provides new satisfactions. And learning to lead people is a novel opportunity for growth. But new responsibilities always require the surrender of

familiar pleasures. Think about your future before you give up the present. The deepest regrets I’ve heard from those who took the job were the loss of tribe and simplicity.

Tribe. When you become the boss your peers are no longer peers. This might unsettle valued friendships. Also, your new peers may be less to your liking. Examine them closely before moving up to their level. Likewise, when you are granted more power, you are implicitly agreeing that your loyalty from that day forward is expected to be more to the enterprise than to your colleagues. This may offend your former tribe. For example, if you argue against new ergonomic chairs that you formerly championed — because now you see a better and higher use of the funds — they may see you as a sellout. Verbally, or nonverbally, they’ll express their disgust at the new airs you’re putting on in an attempt to turn you back into a peer. You’re not. And you never will be again. Are you okay with that? The extreme case of your tribal loss may be the need to dismiss one of your former peers. Could you? Would you? Would you dress them down if needed in order to uphold the interests of the enterprise? Would you give one of them an unattractive assignment if that’s what the team needed

done? Try the job on. Try to imagine the crucial moments you will face that may require setting new expectations and social contracts with previous peers. Are you willing to fully embrace the requirements of this new authority?

Simplicity. The world is no longer as simple as your opinion — it’s now about *our*. You will encounter a new set of tradeoffs. You don’t get to sit in the cheap seats and blame “management” anymore — because you are now management. You can’t take simple positions like “the customer comes first” because you have to balance cost, quality, schedule, and other factors. When you take the job you leave a world of value simplicity and enter one of value complexity. You will have to advocate positions that you may not totally agree with because you are now a part of a management team. Are you ready for that?

Take counsel from your fears. Fear is normal. If you aren’t scared you shouldn’t be trusted with fire. You’ve got two options for dealing with those jitters — you can cover for them or connect with them. Faking confidence doesn’t work. If you’re worried about failure or criticism, that’s normal. Authenticity — first with yourself and then with others — is the path to legitimate serenity. For example, if you’re

being asked to lead a team of engineers — most of whom are smarter than you — the worst thing you can do is cover for your fear with some supercilious display of your wisdom. The ultimate display of confidence is a comfort with truth. Acknowledge your deficiencies without dwelling on them. Then focus on your strengths.

Check your motive. If you say yes to becoming a manager, think carefully about why you are saying it. Is your primary motive ambition or contribution? Is it about looking good or doing good? If you want power to gratify your ambition, your leadership will be all about you. You’ll fail to cultivate the legitimate trust of your team. You’ll guard your power jealously rather than being generous with it. You’ll obsess over others respecting you rather than doing the right thing. And all of that will hobble your capacity to be bold and decisive. Danny Meyer says that the gift of fire isn’t “power over” it is “power to.” The organization is willing to grant it to you if your intent is to be a steward, not a monarch.

Leadership offers profound satisfactions — but only if embraced fully, willingly, and for the right reasons. ☺☺

Bright Ideas

Tapping internal bench strength for training has many advantages HR.BLR.COM

Do you tap internal subject matter experts for your training initiatives? If not, a new survey suggests that you might want to consider doing so.

Subject matter experts can help build credibility in training and stretch training dollars, and a survey suggests another benefit to their participation: employee retention.

The survey identified a significant lack of development and advancement opportunities for high-professional talent, defined as "deep subject-matter experts, such as scientists, researchers, or software developers, who may not have aspirations to be organizational leaders."

Seventy-two percent of surveyed executives indicated that their organization did not have a clear path for advancement for high-professional talent, and 78% reported that they do not have development programs designed to help these individuals advance within their

specific function.

"With the global economy becoming fiercely reliant on knowledge, technology, and innovation, many businesses today require highly specialized leaders," said Tim Vigue. "It's critical for companies to find ways to develop, reward, and advance people with deep levels of expertise, not just people with good leadership skills."

In addition, other than promoting high-professional talent into formal management roles, 55% of respondents said their organizations do not have

ways to encourage and reward those professionals.

"Our survey found that companies that rely solely on promotions and raises for high professionals are missing the point," said Marji Marcus. "We recommend initiatives that recognize the deep expertise these individuals have, and offer them opportunities to grow their contribution within their own functional areas."

When asked what matters most to high-professional talent, 64% of survey respondents pointed to "being recognized as a subject matter expert,"

followed by an ability to build their professional skills (25%). Being given a raise or a promotion were ranked a distant third and fourth—7% and 4%, respectively.

"Companies that depend on having a deep bench of expert talent to drive innovation and growth could find that pipeline depleted if they fail to provide alternative

reward structures and

technical career tracks for these high professionals," said Vigue.

"The real key is providing the mechanisms that enable these experts to expand their contribution by transferring their knowledge to the next generation of experts—as informal coaches and mentors—without having to take on formal management roles," said Marcus. "Otherwise, companies run the critical risk of losing key institutional knowledge as experts retire or leave for another job."



Meet the COLUMBIA CITY TEAM »

MICHELLE DAVIS

Administrative Assistant

» **How long have you been in the staffing business?**

1 year

» **What was your first job?**

What do you remember most about it? A little ice cream shop in Pennsylvania where I grew up called Dairy Delight. Meeting new people and having fun!

» **What motivates you each day to sell and service your clients?** Greeting people with a warm welcome.

» **What makes Peoplelink unique, from your perspective?** I have found that Peoplelink

truly cares about their employees and not all companies do that!!

» **What is your favorite movie?** Any Christmas movie. **Book?** The Bible **Drink?** Strawberry Iced Tea.

» **What do you like most about being a part of the Columbia City team?**

Peggy being my boss...she is great! I also feel like we are a close knit group.

» **How do you unwind when you're not at the office?**

Relaxing with my husband or hanging out with my grandchildren!

DEB ELKINS

Staffing Specialist

» **How long have you been in the staffing business?**

8 years

» **What was your first job?**

What do you remember most about it? We owned a family 200 acre apple orchard. We picked apples for 5 cents a bushel. We worked right next to all the workers that came in from Jamaica. I loved listening to them sing. Then we pressed cider with the apples that were not sold. 2015 was my father's final year pressing cider.

» **What motivates you each day to sell and service your clients?** I love when clients call and tell us "how much they appreciate our help." That we sent them just the right person for the job. Then the employee comes in (bringing us coffee of course) stating "this is the exact job I have been looking for."

» **What makes Peoplelink**

unique, from your perspective? I like that we find jobs for people, not people for jobs. I appreciate that we have a corporate office that we can call at any time and they are willing to help us out.

» **What is your favorite movie?** All Die Hard **Book?** John F Kennedy and Family **Drink?** coffee.

» **What do you like most about being a part of the Columbia City team?** Teamwork: We each step in and complete what needs to be done. We never worry whose work it is.

» **How do you unwind when you're not at the office?** I am a Children's Pastor. I am on staff at the Columbia City Church of the Nazarene. It gives me great pleasure to help children see a dream and reach for it. I love planning special events that "WOW" them.



Michelle Davis, Peggy LeFever, Deb Elkins

PEGGY LEFEVER

Branch Manager

» **How long have you been in the staffing business?**

A total of 20 years. 10 years with Peoplelink and 10 years with Lincoln Financial.

» **What was your first job?**

What do you remember most about it? Topping onions in the summers. We made 25 cents a crate and it was a competition to see who could get the most each day. I remember we wore our swimsuit tops so we could get a good tan out in the sun all day.

» **What motivates you each day to sell and service your clients?** I love helping others. It is very rewarding when I find the perfect jobs for people and our clients. I truly enjoy the good relationships I have with my clients and strive to keep them happy and satisfied with our services.

» **What makes Peoplelink unique, from your perspective?** I feel that Peoplelink really cares about their employees and the customers. They treat us with respect and allow us to work independently in our branch.

We have a great Corporate staff who are always there if we need them.

» **What is your favorite movie?** I like action and comedy movies, I think my favorite is Pretty Woman.

Book? I don't have a favorite book, I like natural health books the best.

Drink? Chocolate shakes and smoothies

» **What do you like most about being a part of the Columbia City team?**

We work together as a team. If something needs done we just do it, there's no question over whose job it is. We get along well, work hard and have fun at the same time.

» **How do you unwind when you're not at the office?**

I like watching General Hospital and Dr. Oz when I get home from work. I enjoy spending time with my grandchildren, family and friends. I like taking walks and boating in the summer.

2015 Engagement Study

It's no secret that employee engagement directly impacts a company's success. Simply put, when engagement levels are high, businesses tend to perform better.

To assess the American workforce's current state of on-the-job engagement, 2,000 employed adults and over 500 employers were recently polled. Each group was asked for input on how employees feel about their work, why employees leave their jobs, how they perceive current compensation and if they think they should get a raise. They even asked if they'd give up a \$5,000 raise to be happier at work.

In general, employees view their work in positive terms, but our study shows that employers are considerably more optimistic about employee engagement across many of the metrics we measured.

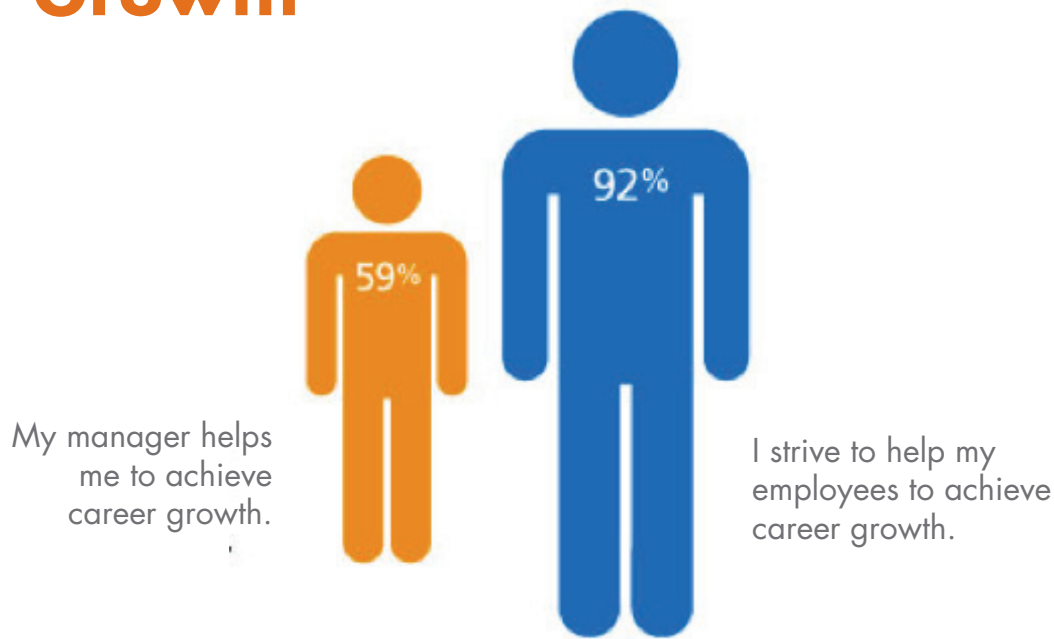
Employees and Employers: we rate engagement differently

Employees generally have a positive view in terms of their engagement at work, with a majority saying they like going to work, are inspired to do their best, and feel recognized and valued. When asked if they enjoy going to work every day, over half (67%) of employees agree. Employers, however, are much more enthusiastic on the subject, with 81 percent assuming their employees happily embark on the daily work routine.

Career Advancement

An overwhelming majority of employers (92%) feel they help employees grow their careers. But when we asked employees if their bosses assist with their career development, far fewer (59%) agree. Additionally, employees say a promotion is the most likely thing to boost their happiness at work, followed closely by more workplace flexibility.

Career Growth



Employee Empowerment

While both employees and employers think companies would perform better if they listened to employees' ideas, there's a gap

in the perception of whose ideas matter. Almost every manager interviewed (96%) say they value employees' opinions, but fewer employees (75%) feel their feedback matters to their bosses.

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2015 Engagement Study

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Listening and Inspiring

My company would be more successful if it listened more to my ideas.

58%

My company would be more successful if it listened more to employees' ideas and feedback.

73%

My manager values my opinion.

75%

I value the opinions of my employees.

96%

I am inspired by my manager.

55%

I am inspired by my employees.

82%

Take a Break

On the topic of vacation, nearly half (45%) of employees say their bosses don't help them disconnect when they're out of office, and

just as many (46%) say they worry about work when they take time off.

9 Habits of Profoundly Influential People

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around them to explore new ideas and think differently about their work.

4 They leverage their networks

Influential people know how to make lasting connections. Not only do they know a lot of people, they get to know their connections' connections. More importantly, they add value to everyone in their network. They share advice and know how, and they make connections between people who should get to know each other.

5 They focus only on what really matters

Influential people aren't distracted by trivialities. They're able to cut through the static and clutter, focus on what matters, and point it out to everyone else. They speak only when they have something

important to say, and they never bore people with idle banter.

6 They welcome disagreement

Influential people do not react emotionally and defensively to dissenting opinions—they welcome them. They're humble enough to know that they don't know everything and that someone else might see something they missed. And if that person is right, they embrace the idea wholeheartedly because they care more about the end result than being right.

7 They are proactive

Influential people don't wait for things like new ideas and new technologies to find them; they seek those things out. These early adopters always want to anticipate what's next. They're

influential because they see what's coming, and they see what's coming because they intentionally look for it. Then they spread the word.

8 They respond rather than react

If someone criticizes an influential person for making a mistake, or if someone else makes a critical mistake, influential people don't react immediately and emotionally. They wait. They think. And then they deliver an appropriate response. Influential people know how important relationships are, and they won't let an emotional overreaction harm theirs. They also know that emotions are contagious, and overreacting has a negative influence on everyone around them.

9 They believe

Influential people always expect the best. They believe in their own power to achieve their dreams, and they believe others share that same power. They believe that nothing is out of reach, and that belief inspires those around them to stretch for their own goals. They firmly believe that one person can change the world.

Bringing It All Together

To increase your influence, you need to freely share your skills and insights, and you must be passionate in your pursuit of a greater future. ✍️





Peoplelink is pleased to announce that Jason Bussard has been chosen as our October *Shining Star* employee. Jason is a general laborer with Pulley Kellam. He reports to the Marion, Indiana branch.

Jason has worked at Pulley Kellam for nearly a year. His responsibilities include metal fabrication and punch press operation. According to his supervisor John, Jason is a punctual, hard-working employee. He is an excellent employee all around.

Jason most appreciates the safe work environment offered him at Pulley Kellam. In his free time, he enjoys collecting Indian art.

Congratulations to Jason for being Peoplelink's October *Shining Star* employee!



Jason Bussard is pictured with his supervisor, John Hall.

Find your shining star!

Contact Peoplelink at 574.232.5400.

NLRB Provides Employers a Roadmap to a Legally Compliant Off-Duty Access Policy

By Jon Hyman, *Workforce.com*

Can an employer lawfully limit non-employees' access to its facility? On its face, such a question might seem silly. After all, an employer should be able to control its property, right? What about access by union organizers? Does this wrinkle change the answer?

In *Marina Del Rey Hosp.* (10/22/15) [pdf], the National Labor Relations Board considered the following access policy:

Off-duty employees may access the Hospital only as expressly authorized by this policy. An off-duty employee is any employee who has completed or not yet commenced his/her shift.

An off-duty employee is not allowed to enter or re-enter the interior of the Hospital or any Hospital work area, except to visit a patient, receive medical treatment, or conduct hospital-related business. "Hospital related-business" is defined as the pursuit of an employee's normal duties or duties as specifically directed by management.

An off-duty employee may have access to non-working, exterior areas of the Hospital, including exterior building entry and exit areas and parking lots.

Any employee who violates this Policy will be subject to disciplinary action up to and including termination.

Did it pass NLRB muster?



According to the NLRB, "an employer's rule barring off-duty employee access to its facility is lawful only if it is limited to the interior of the facility, is clearly disseminated to all employees, and applies to off-duty access for all purposes, not just for

union activity." Because this policy checked each of these boxes, it passed muster under the NLRA.

Of course, having a lawful policy, and lawfully applying that policy, are completely different.

However, we agree with the judge that the Respondent's policy was unlawfully applied in a manner that discriminated on the basis of union activity. The record reveals that the Respondent permitted off-duty employees to enter the Hospital for a variety of reasons unrelated to union activity (such as picking up paystubs, submitting scheduling requests, applying for a transfer, and attending social events such as retirement parties and wedding or baby showers). But on at least two occasions, the Respondent applied its off-duty access policy to prevent or curtail off-duty employees from meeting with union representatives in the hospital cafeteria. This evidence supports a finding that the Respondent applied its off-duty access rule in a disparate manner, in violation of Section 8(a)(1).

What lessons can employers take away from this decision?

1. If you're looking to draft an employee off-duty access policy, you could do a whole lot worse than one the NLRB has already blessed as kosher.
2. Once you implement that policy, make sure you do so fairly, consistently, and non-

discriminatorily. Otherwise, your lawful policy might still draw the NLRB's ire.

It's not Illegal to Give a Negative Job Reference, but ...

By Jon Hyman, *Workforce.com*

When you receive a phone call from a company looking for information on a former employee that was a less than stellar employee, or worse, fired, do you ...

- (a) Ignore it.
- (b) Confirm only the fact of prior employment and dates.
- (c) Give a truthful, negative reference.

Most employers do either "a" or "b", while very few opt for "c". Many employers avoid "c" because they fear liability if the ex-employee loses a job because of a negative reference. Yet, in Ohio and elsewhere, there is nothing illegal about providing truthful, negative information.

Ohio Revised Code 4113.71 creates a privilege for employers to provide information about the job performance of a former employee to a prospective employer of that employee.

An employer who is requested by an employee or a prospective employer of an employee to disclose to a prospective employer of that employee information pertaining to the job performance of that employee for the employer and who discloses the requested information to the prospective employer is not liable in damages in a civil action to that employee, the prospective employer, or any other person for any harm sustained as a

proximate result of making the disclosure or of any information disclosed, unless the plaintiff in ... establishes ... (1) ... that the employer disclosed particular information with the knowledge that it was false, with the deliberate intent to mislead the prospective employer or another person, in bad faith, or with malicious purpose; or (2) ... that the disclosure of particular information by the employer constitutes an unlawful discriminatory practice ...

So, if the practice of providing a truthful, non-malicious, good faith, non-discriminatory negative reference is perfectly legal, why are so many employers wary of doing it? Consider *Kienow v. Cincinnati Children's Hosp. Med. Ctr.* (Ohio Ct. App. 10/23/15).

Kienow concerned a former employee of Cincinnati Children's who failed to get hired by a new employer because of a negative reference she received from her former supervisor. She sued, claiming defamation and tortious interference with her employment.

She lost the defamation claim because she brought it too late, but the tortious interference claim survived despite 4113.71.

Cincinnati Children's maintains that Kienow's complaint did not plead facts to overcome the statutory privilege. But it is not obvious on the face of the complaint that the privilege applied: there was no allegation that Dayton Children's "requested" information from Cincinnati Children's or Morris.



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In other words, because Kienow argued that her supervisor at Cincinnati Children's reached out to her prospective employer without first being asked for the reference, 4113.71 might not apply.

What does all this mean? It means that even though employers hold a legal privilege to provide a negative reference, the associated transactional costs from potential litigation (no matter how unlikely for an employer to lose) is enough of a deterrent such that negative job references are almost non-existent.

Can you provide a negative references on a marginal ex-employee? Absolutely. Should you? That depends on your tolerance for the potential of litigation, and your belief that people deserve a second chance elsewhere.

DOL quietly drops big news on new overtime rules

By Christian Schappel, HR Morning

The DOL's been pretty quiet about what it's doing behind the scenes about changing the overtime exemption rules and salary threshold. But it has finally spoken.

At the American Bar Association's Labor and Employment Law conference in Philadelphia, the Solicitor of Labor M. Patricia Smith shared some insider info that elicited "gasps" from the audience, according to a report by *The Wall Street Journal*.

Smith said during a panel discussion that the finalized changes to the FLSA's overtime eligibility rules likely won't be issued until late 2016. From that juicy piece of info, one could surmise that they won't take effect until 2017.

This is huge news for the business community, which hasn't been shy about expressing outrage over the proposed overtime rule changes the DOL issued this summer. The

delay means employers have more time to prepare, even though they don't know what the finalized rules will look like yet.

The period during which the public can comment on the proposed rules ended Sept. 4, and the DOL received roughly 270,000 comments during that period. That's about three times the amount of comments the agency received when it last updated the overtime rules back in 2004. About 50,000 comments came in during the last week alone.

But despite that last-minute outpouring of commentary, the DOL announced it wouldn't extend the comment period. It said the standard 60-day comment period — combined with its outreach efforts prior to the proposal being published — was enough to "produce a quality regulation."

So all signs pointed to the final rules being issued sometime in early 2016. But Smith cited the amount of comments it received and the complexity of the law as the two main reasons the agency's looking at a later date for releasing the rules.

WHAT WE DO KNOW

While the DOL's been mum on whether or not it'll make significant changes to its proposed rules, we do know a few things for certain about what'll be in the final rules.

For starters:

- **The minimum salary threshold will rise ... significantly.** The current threshold a worker must hit to be overtime-exempt is \$23,660. The proposed rules seek an increase to \$50,440. And while it may not climb quite that high, it will climb — likely to at least \$40,000 or so.
- **The threshold will automatically increase.** For the first time ever, the salary threshold will be tied to an



automatic-escalator, so it can keep pace with inflation — and so major legislative changes aren't needed every time lawmakers want it to increase.

• The DOL is looking at making changes to the duties tests.

The DOL hasn't suggested changing the executive, administrative, professional, computer or outside sales duties tests (see them here) yet. But the agency did specifically ask for comments on whether the tests should be changed and whether they're working to screen out employees who are not bona fide white collar exempt employees.

THE X FACTOR

There is one X factor in all of this that no one has mentioned yet: the effect the upcoming presidential election will have on the rulemaking process.

Originally, the DOL had set a tentative deadline of November 2014 for issuing the proposed rules. Then, they didn't come out until more than six months after that soft deadline had passed.

Then, it was expected the finalized rules would be issued sometime in early 2016. Now, that's clearly not what's going to happen. All of these delays have butted the rulemaking process right up against the

presidential election.

This begs the question: *Would the Obama administration really issue a highly controversial set of finalized rules just prior to the election?*

After all, business groups, employers and even a former DOL administrator (who oversaw the last rule changes) have staunchly opposed the proposed rule changes, saying they'll stifle companies' ability to operate, drive prices up and/or actually hurt the very people the rules are trying to help. This could potentially give the GOP more ammunition to use on the campaign battlefield.

On the other hand, if public opinion polls reveal that the rule changes are something the voting public wants and views as beneficial, the Democrats may try to push the final rules through prior to the election to give their political campaigns a shot in the arm.

Time will tell which scenario will play out — but a lot of it likely depends on how Democrats feel the voting public will react to the rule changes once they're finalized.

One final thing to consider: Since the entire rulemaking effort was spurred by the Obama administration, and heavily backed by Democrats, it's entirely possible any finalized rule changes will be repealed should a Republican win the White House next fall.

Disabilities: Employers must listen carefully to requests for accommodations

by Teresa Shulda, HR.BLR.COM

Sometimes it seems obvious that certain jobs require certain abilities. For example, pilots must have good vision to fly planes. And firefighters must be physically able to rescue people from burning buildings. But with other jobs, the job qualifications aren't so obvious. That means the interactive dialogue between employers and employees or job applicants is even more important when a reasonable accommodation is requested.

In one recent case out of Wyoming, a deaf applicant argued that her hearing impairment wouldn't prevent her from performing a job at a plasma center as long as she was provided certain reasonable accommodations. The U.S. 10th Circuit Court of Appeals (which covers Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming) agreed that the applicant had at least presented enough evidence to plead her case to a jury.

FACTS

BioLife operates a plasma donation center. A few years ago, BioLife combined three separate jobs into one position: plasma center technician (PCT). The PCT has three primary functions:

1. Taking donors' medical history;
2. Monitoring the area where donors give plasma to watch for adverse reactions; and

3. Working in the sample preparation area, where donated plasma is processed and stored.

The new PCT position was formalized via a written job description.

Kelly Osborne applied for a PCT position and received a conditional offer of employment after two interviews. During the interviews, she made it clear that she is deaf and primarily communicates through lip reading. Her offer was contingent on her passing a background check, a drug test, and a medical screening.

After receiving Osborne's medical paperwork as part of the medical screen, BioLife HR, which is based outside Wyoming, determined that she wasn't qualified for the job because she couldn't effectively monitor the donor area—one of the primary duties of a PCT. Specifically, she couldn't hear the plasma machine alarms go off if something went wrong or someone needed attention during the plasma donation process.

After BioLife rescinded her employment offer, Osborne sued under the Americans with Disabilities Act (ADA).

She argued that she could perform the essential functions of the PCT position with reasonable accommodations, including:

1. Job restructuring so that she wouldn't have to spend much time monitoring the donor area;
2. Installing visual or vibrating alerts on the plasma donor machines; and
3. Providing the donors with call buttons.

LOWER COURT'S DECISION

The lower court dismissed the case, concluding that Osborne hadn't established that she was qualified for the PCT position with or without a reasonable accommodation. The lower court reasoned that because she couldn't hear the alarms on the plasma donor machines, she was unqualified for the PCT position.

The court also rejected each of the three accommodations Osborne proposed. First, it held that job restructuring would alter the nature of the PCT position, which the ADA doesn't require. Second, she didn't show that installing visible or vibrating alerts on the plasma donor machines was feasible. And finally, call buttons wouldn't completely eliminate the health and safety risks posed by Osborne's deafness, and such an accommodation would shift the essential function of donor monitoring to the donors themselves.

Osborne appealed the decision, and the 10th Circuit reversed the lower court's holding.



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Disabilities: Employers must listen carefully to requests for accommodations

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10TH CIRCUIT'S RULING

The 10th Circuit agreed that job restructuring wasn't a reasonable accommodation because it fundamentally altered the PCT position by eliminating one of the essential functions—monitoring the donor area. But the 10th Circuit held that a jury should decide whether or not the other two proposed accommodations were reasonable.

Addressing the accommodation of installing visible or vibrating alerts on the plasma machines, the 10th Circuit held that the lower court erred when it concluded that Osborne failed to show this was a feasible option. She only had to show that the accommodation appeared to be reasonable, and she did that by presenting expert witness testimony describing disabled individuals being accommodated in the healthcare industry via simple technological fixes.

It was then up to BioLife, not Osborne, to show that the accommodation was not feasible. BioLife had to produce evidence that the proposed accommodation wouldn't be possible because of its cost, logistics, or some other reason. In other words, BioLife had to prove the accommodation would be an undue burden.

The court noted that adding technology to the plasma machines would only solve half the problem, though. To allow Osborne to perform the full job of monitoring the donor area, BioLife would also have to provide donors with call buttons so that she would be alerted if a problem didn't set off the plasma machine alarms.

In overturning the lower court's ruling regarding the call button accommodation, the 10th Circuit held that there was a question of fact about whether Osborne posed a direct threat to the safety of the donors. The lower court reasoned that call buttons wouldn't eliminate all of the risks, but the 10th Circuit noted that BioLife had to show that Osborne posed a "significant risk" to the health and safety of others, not just "some risk."

Osborne had presented evidence that the plasma donation process is safe and historically carries a very low risk of significant adverse outcomes. The court held that BioLife's concerns about her threat to donors' safety were hypothetical and she presented an infinitesimal risk, not a significant risk. Thus, it was up to a jury to determine whether she posed a "direct threat" to the health and safety of the donors.

The court went on to note that the burden on donors to push a call button is no different than the onus on them to call out if they are in distress. So the accommodation didn't shift the essential function of the job back on the donors.

Osborne's case was revived, and BioLife has to contemplate whether it really wants to let a jury decide if it violated the

ADA. *Osborne v. Baxter Healthcare Corp.*, No. 14-8047 (10th Cir., Aug. 24, 2015).

LESSONS LEARNED

At first glance, it seems reasonable that BioLife rescinded Osborne's offer based on its conclusion that she couldn't perform the full job she had applied for. But the 10th Circuit's decision demonstrates just how carefully employers must evaluate requests for accommodation.

As part of the interactive dialogue, you need to spend time talking with employees and job applicants to determine whether or not a proposed accommodation would really work. That often requires

more than just reviewing medical paperwork, particularly when an employee proposes specific accommodations.

An employer is in the best position to know what the job requires, but disabled employees and job applicants are often well aware of their abilities. Listening to employees or applicants specifically describe how they would perform the job duties with a requested accommodation can go a long way toward helping you determine if the accommodation is truly reasonable.

