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Raising the Bar in Staffing Since 1987



What The Movie 'Sully' Can Teach Us About Leadership

Rodger Dean Duncan



Tom Hanks is starring in another movie that provides not only good entertainment, but a great tutorial in sound leadership practices.

The movie is Sully. You know the story by now. When a flock of geese shut down the engines on a U.S. Airways flight taking off from New York's LaGuardia Airport, pilot "Sully" Sullenberger didn't have the luxury of time to peruse all the procedure manuals. Calling upon his experience as a glider pilot, he safely landed his 67-ton airliner in the middle of the Hudson River. All 155 passengers and crew survived the harrowing ordeal.

With a standardized checklist of procedures, most teams can clip along nicely. But what happens when something goes wrong? What about

some unexpected event that's way outside the imagination of the procedure writers? What then? The situation can quickly degenerate into something resembling the "I Love Lucy" scene where Lucy and her friend Ethel were working in a chocolate candy factory. All was going well until the conveyor belt suddenly accelerated. At first, Lucy and Ethel simply worked faster. But soon they were stuffing chocolates into their pockets, into their mouths, and inside their uniforms to prevent their supervisor from discovering they couldn't keep up.

This was a classic example of unintended consequences. So, you might ask, what about teamwork situations where errors have the potential for catastrophic consequences? For

example, wouldn't we want the team in a nuclear power plant control room to adhere inflexibly to standardized instructions? Wouldn't we want the pilots in charge of our cross-country flight to stick rigidly to the procedure book?

Well, yes and no. First, remember that no set of procedures can anticipate every possible contingency. A tank rupture forced the Apollo 13 mission to be aborted. Three astronauts found themselves 200,000 miles from earth, with limited ability to control their spacecraft, and with a rapidly depleting supply of oxygen. Only the ingenuity of the crew, flight controllers, and support personnel enabled the astronauts to return home safely.

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FIVE Things That Won't Get You Hired AND ONE THAT WILL

There is no question that the job search process has gotten a lot harder over the past several years. The economy was terrible for years of course, but that isn't the whole story. Even now that the job market is warming up, a job-seeker can still have major obstacles to contend with.

Here are five of the biggest barriers between smart and capable job-seekers and hiring managers who desperately need help:

Five Barriers Between Job-Seekers and Hiring Managers

1. Automated job-application sites a/k/a Applicant Tracking Systems that use keyword-searching to weed people in or out of the interview process
2. Unclear, opaque and even talent-repelling job ads that leave job-seekers guessing as to the salary range, the job description and the requirements of the job
3. Broken, bureaucratic interview processes that include pointless steps, unexplained delays and assignments for job applicants to perform work for free
4. Interviews conducted by people who have little to no understanding of the job to be filled; and

5. A focus on hiring the most-qualified person for the lowest possible salary

Employers blame 'talent shortages' for their problems in filling their organizational charts, but that is nonsense. Leading a company is

education and abilities. Smart employers fill their openings easily because they can see past the resume to the capabilities of the person behind it.

They don't view recruiting as a weeding-out process. They see

and keep their eyes glued to their clipboard? How is that a business process in 2016?

Smart employers hire awesome people and teach them what they don't already know. They don't expect candidates who

possess every one of their endless list of Essential Requirements to show up at their door, eager to work for them. They live in the real world. They don't blame talent shortages or other bogeymen for their own leadership problems.

Job-hunters in today's environment have learned that pitching applications into the void via online application systems is a waste of time.



an exercise in dealing with reality, and when employers whine about talent shortages and blame the educational system for failing to prepare students for roles in their companies, they are not operating in the real world.

In the real world, people come to the job market equipped with all sorts of interesting combinations of talent, pluck, experience,

recruiting for what it is: a sales and marketing mission. They don't use technology as a shield to keep humans away from their companies. They love to have substantive conversations about broad-ranging topics on their job interviews.

Why would they invite a person into their facility only to read them questions from an ancient script

When your brilliant career is boiled down to a few lines of text and you're asked about your Tasks and Duties at each job (and your Reason for Leaving!) as though these were the essential things for a hiring manager to know, you're already vanquished. You can't win.

Your style and substance can't permeate that membrane built of

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The 'Golden Suggestion' for Managers

Wayne Turmel

One of the most quoted precepts for human behavior is referred to as the Golden Rule: "Do unto others as you'd like them to do unto you." It's damned fine advice, and some variant of it is found in nearly every major religion and school of philosophy. But when it comes to management, the Golden Rule is flawed.

I'm not talking about the notion that you shouldn't do or ask something of someone you wouldn't be willing to do yourself. That's basic human decency. I'm referring to the notion that other people work in the same way we do, and want to be managed the same way you like to work.

Let me give you a simple example. Two members of my friend Alice's project team are equally good at their jobs. They both serve the same function, and she has an equally high opinion of both. Yet when she got some 360 degree feedback, one of them felt she was "micromanaging" while the other felt she could check in more often. How can both things be true when she maintains the same schedule with each?

The truth lies in Alice's adherence to the "Golden Rule." She used to do their job, and was very good at it. She was also an experienced teleworker, brilliant, and was excellent at focusing and drowning out distractions until the job was done. She always wanted her manager to give her guidelines, check in infrequently, keep interactions short, be there when Alice did have a question or needed help, otherwise generally stay out of her way. To her mind, that's how she always wanted to be managed, and therefore how she planned to work with her team.

The problem, of course, is that she was (and is) a unique case. Not everyone has her experience. Some people need constant short interaction in order to feel connected to the work and check assumptions. Others want to get their marching orders, be left alone to complete them, and they'll jolly well let you know when they need help.

That's what was going on there. One employee, newer to the team and unused to teleworking, wanted some form of contact almost daily. Sometimes there were specific questions to be addressed, sometimes that person just wanted to know they

weren't alone in the universe. It took very little time, and often took a simple Instant Message asking, "how's it going? How can I help?"

The other employee was tenured and a bit of an introvert. He preferred longer, highly structured and less frequent discussions, usually by phone or (grudgingly) webcam. Alice often needed to initiate the conversation, which that worker took as interruptions.

One person's short, frequent check-ins can be someone else's intrusive micro-managing. Your trust in someone's ability and desire to stay out of their way may be seen as a lack of communication or even caring.

You don't know unless you have real conversations about how people prefer to work, try it out, and assess whether it's working for both of you.

As far as managing others goes, then, Golden Rule, then, should be seen as more of a Golden Suggestion. ✚



Meet **ALYSIA SCHILLING** » » »

Senior Recruiter, Pompton Plains

» How long have you been in the staffing business?

3 ½ years

» What was your first job?

What do you remember most about it? My 1st job was at a Bagel & Deli shop that my neighbors own. I remember having a lot of fun working with different people. It was a typical deli job, but working with friends made it fun.

» Who was the worst boss you ever had and why?

I typically do not like to criticize any manager, however I once had a manager in a restaurant

I worked for that took no ownership or accountability for his faults and had poor management style.

» What motivates you each day to sell and service your clients?

The excitement that comes from placing candidates and being recognized by a client for a job well done.

» What are some of your long-term goals?

- To assist with opening new offices in order to expand our client base
- To help coordinate team building exercises

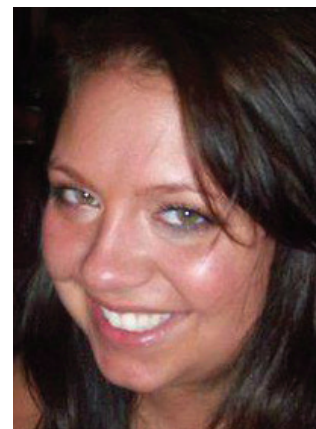
- Staff incentives
- Staff contests with a healthy competitive edge

» What makes Peoplelink unique, from your perspective?

- Very genuine and approachable management
- Hands on management
- Continuous motivation to boost morale
- Staff recognition throughout the company

» What makes you successful as a Manager?

- Being organized and detail



oriented

- Being able to separate friendship from work
- Having the type of personality that motivates and drives those around me

» What is the best advice you could give to other Peoplelink staff members?

Work hard, have fun and love what you do.

» What is your favorite movie? My favorite movie is Sweet Home Alabama. **Book?** Harry Potter. **Drink?** Wine.

» If you could have any car you want, what would it be? Range Rover .

» What is your home city? What is the greatest feature about your home city?

Vernon, New Jersey. My favorite thing about my home is that it's very much in the suburbs yet still close enough to the city.

» How do you unwind when you're not at the office? Spending time with friends and family

» What do people like most (least) about you? Most: That I'm always willing to help out
Least: That I talk loudly. 🗣️



Experience the Peoplelink difference.

Drive productivity. Reduce staffing costs. Run more profitably. Those are just a few of the ways in which Peoplelink can help you achieve success.

To ensure we deliver the best return on your staffing investment, we first take the time to understand your organization, your expectations, and your objectives. By combining old-fashioned fundamentals, like hard work, integrity, and service, with a strategic approach to staffing, Peoplelink can not only fulfill your hiring needs, but can make a significant positive impact on your profitability.

Our "people first" approach to staffing will help you meet and exceed your business goals.

For more information, call Jeannine Victor at 574.232.5400 x 261.

The Gig Economy

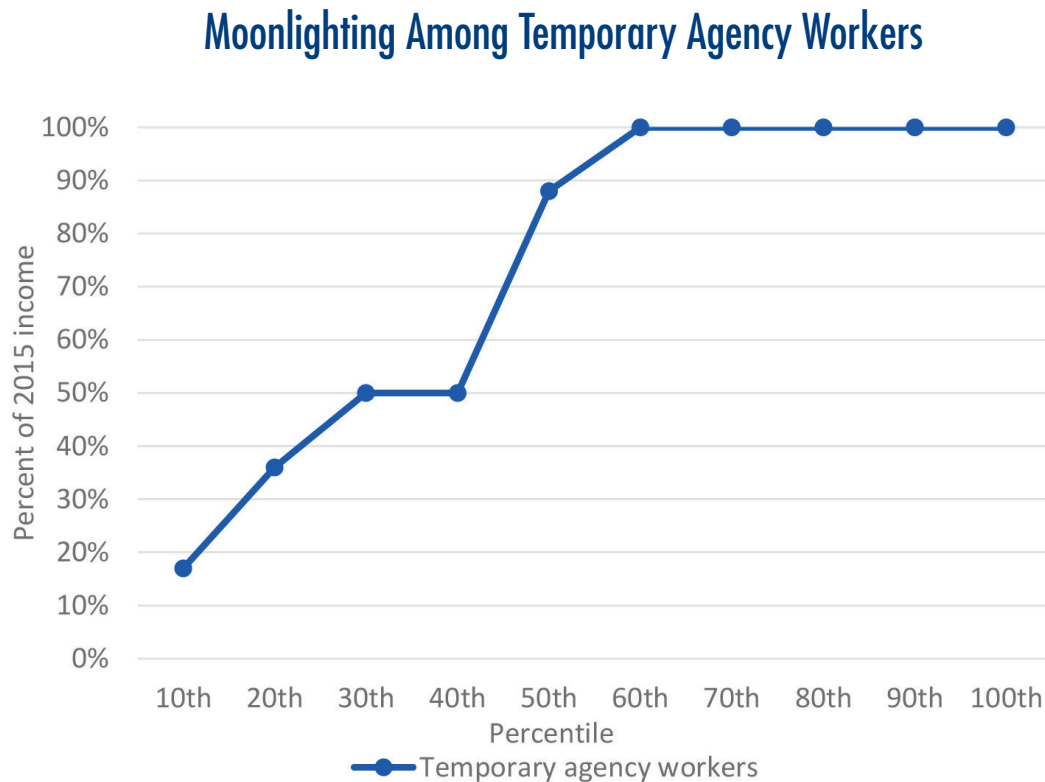
Moonlighting Among Temporary Agency Workers

Source: Staffing Industry Analysts

To what degree are people using contingent work for supplemental income, rather than for their entire income? The graph to the right provides further insight to this question, specifically regarding temporary agency workers (other types of contingent workers are addressed on the following pages).

The graph below measures how much of a temporary agency worker's 2015 income is from temporary agency assignments. For example, if a temp. agency worker did no work outside of temporary agency work, the percent of income would be 100%.

On the x-axis are the percentiles. At the 10th percentile, we see the dot on the graph corresponding to 17% of income. This means that 10% of temporary agency workers generated 17% or less of their income through temporary agency work. Moving to the 20th percentile, we see 20% received 36% or less of their income from such work. At the 50th percentile, which is the median, we see that half of temporary agency workers generated just under 90% or less of their income from such work. Once we get to the 60th percentile, the graph is at 100% of income, meaning that at least the remaining 40% (between the 60th and 100th percentile) of temporary agency workers do no moonlighting outside of temporary agency assignments. They may take more than one temp. agency assignment, but they don't perform any other type of work.



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The Gig Economy

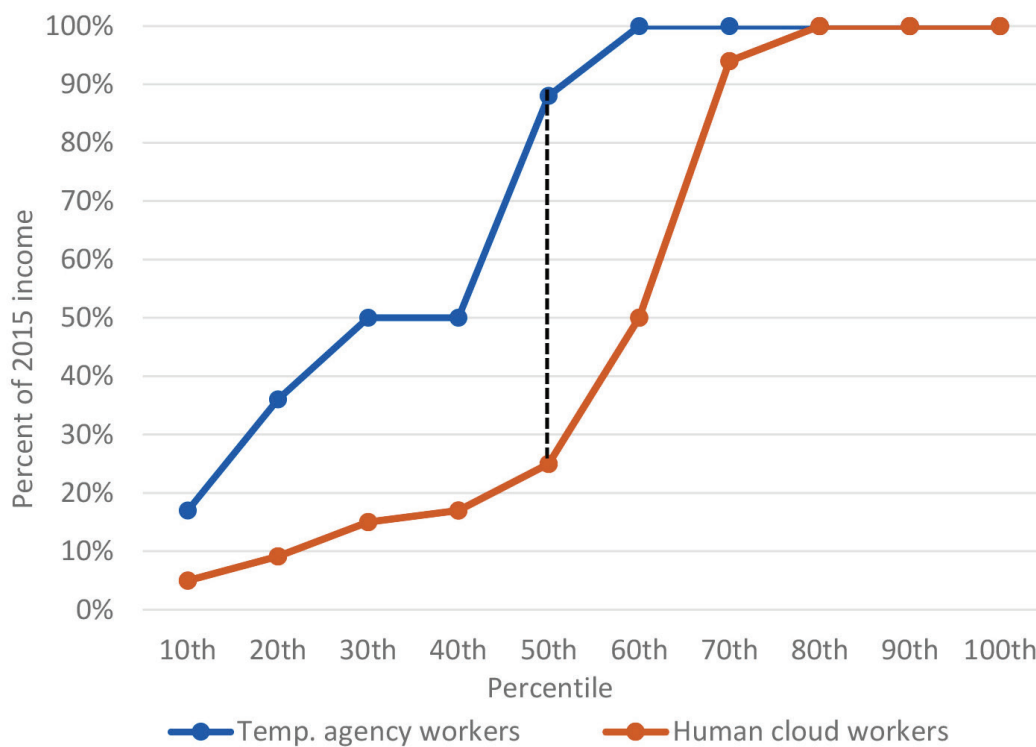
Moonlighting Among Human Cloud Workers

CONTINUED FROM PAGE 5

Now looking at human cloud workers, it takes longer for the line in our graph to make it to 100% of income. Human cloud workers don't get to 100% of income until the 80th percentile. This means 70%-80% of human cloud workers moonlight, compared to 50%-60% for temporary agency workers. In simple terms, the longer it takes for the line to get to 100% of income, the more moonlighting there is.

Perhaps the starkest difference between temp. agency workers and human cloud workers is at the median, where the latter is only generating 25% of income through human cloud work and the former is generating 88% of income through temporary agency staffing. The black, dashed line in the graph further illustrates this disparity.

Moonlighting Among Human Cloud Workers



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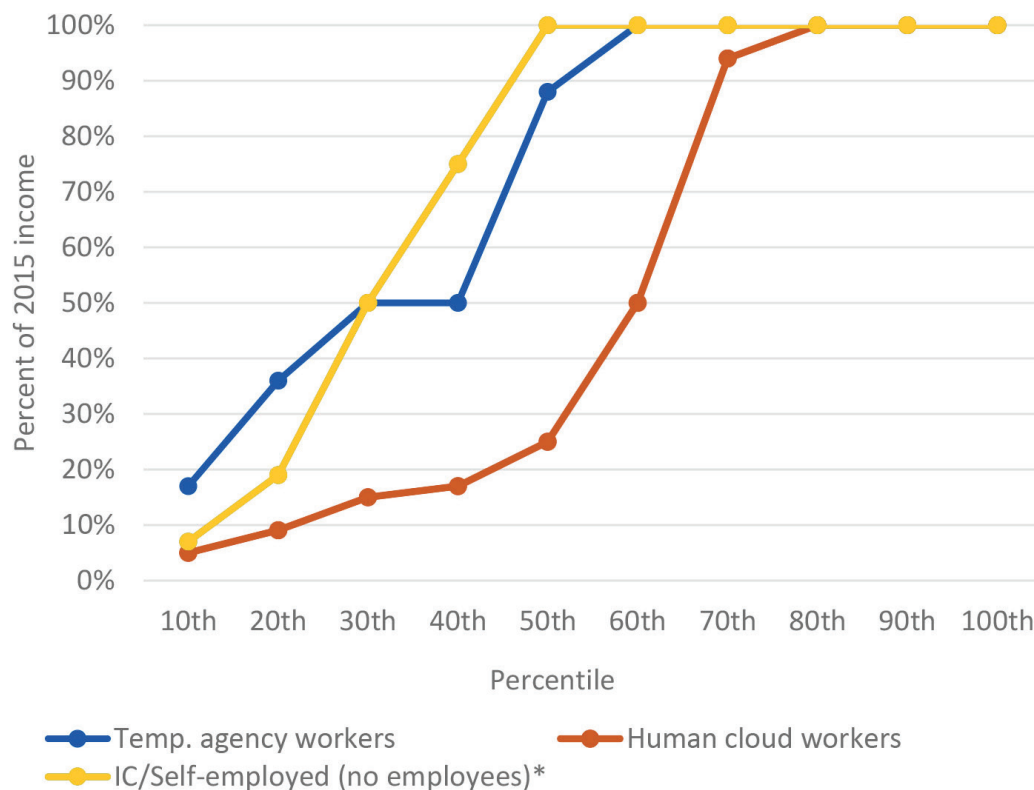
The Gig Economy

Moonlighting Among Self-Employed Contingent Workers

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Self-employed contingent workers do less moonlighting than temporary agency workers; for this group the line gets to 100% of income at the median, meaning that at least half of these workers derive all of their income from self-employed contingent work. Nevertheless, the trajectory for this group is roughly similar to that of temporary agency workers.

Moonlighting Among Self-Employed Contingent Workers



*Excluding 1099/self-employed workers already reported as temporary agency or human cloud workers.

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The Gig Economy

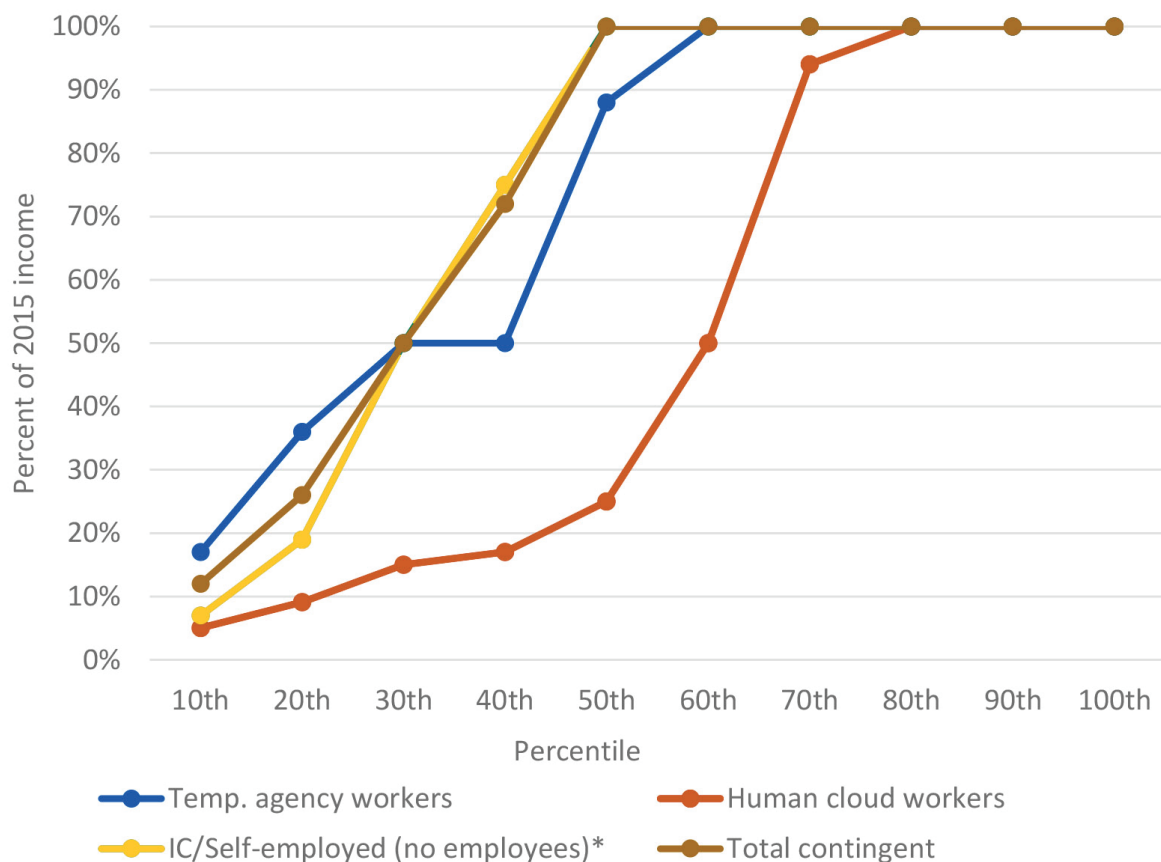
Moonlighting Among Contingent Workers

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The graph on this page includes a line for all contingent workers, representing workers from any of the three categories listed on the graph (temp. agency workers, human cloud workers and independent contractors), as well as the other forms of contingent work noted earlier in this report (temporary employees sourced directly and SOW consultants employed by a consulting firm).

The line for total contingent work roughly mirrors those for temporary agency workers and independent contractors. Human cloud work is really the standout when it comes to moonlighting, although moonlighting is substantial in all of these work arrangements.

Moonlighting Among Contingent Workers



*Excluding 1099/self-employed workers already reported as temporary agency or human cloud workers.

What The Movie 'Sully' Can Teach Us About Leadership

CONTINUED FROM PAGE 1

Most of that ingenuity was “off the books,” not part of any standardized procedure.

Don't misunderstand. I'm not suggesting that people who operate nuclear power plants and airlines should be encouraged to “freelance” if they simply tire of following procedures. I'm merely saying that in addition to complying with the rules (which, after all, are written by imperfect human beings) it's sometimes necessary to respond in the moment with ingenuity and creativity. Too rigid adherence to a tight both-ends-

and-means protocol can result in fake work and waste. Or in extreme cases, death.


Stewardship delegation—conveying trust and accountability for a particular result—is ideally exercised with an ends-but-not-means approach. When ends are specified but means are not, team members are implicitly encouraged to draw upon their full repertoire of knowledge, experience, skill, and resourcefulness in brainstorming and executing solutions. Like the Apollo 13 support personnel—memorialized in the true-to-life

Hollywood movie—team members operating with a clear end but an open-ended set of means can engage in mindful processing to create a workable solution.

Fortunately, the teamwork in which most of us are called on to participate is not nearly as urgent, danger-filled, and adrenaline-pumping as that depicted in the “Apollo 13” and “Sully” movies. Most of our teamwork involves such relatively mundane activities as corporate mergers and acquisitions, enhancing organizational culture,

boosting performance, replacing software systems, or encouraging people to change their behavior.

But the principle is the same. Most teams perform best when a compelling purpose (end) is specified and embraced while the methods (means) of addressing the purpose is left relatively open.

Of course merely articulating a compelling purpose and then leaving team members entirely alone is not good leadership. There's much that leaders can and should do to support work teams along the way. 

From the President's Desk »

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code and cluelessness. No one is going to see what you bring or the depth and breadth of your story through your keywords!

You have to get a job a different way. You can forget the Black Hole application system and reach your own hiring manager directly. First you have to write a Human-Voiced Resume that brings your power across on the page. Then you have to find your specific hiring manager inside each of your target employers. Then you'll send each of them a pithy Pain Letter written just for them.

You can take control of your job search rather than being a victim of it. That is more empowering, more effective and quicker than filling out forty or fifty online job applications and waiting to hear something back — possibly for months, or forever!

Here are five things that won't get you hired on their own, or even collectively — and one thing that will.

FIVE Things That Won't Get You Hired

1. An amazing educational background
2. Years of experience with great organizations/a wide range of tools and systems
3. Your sparkling personality
4. Your stellar references
5. Your wonderful resume

ONE THING THAT WILL GET YOU HIRED

Here's the one thing that will get you hired: your ownership of your own career.

Most people are not in charge of their careers. Either their employer is in charge, or no one is. Most people don't know what they want in their career or how to get it. They don't think about the next job they'd like to have after their current job, and if they lose their job they grab the first job offer they can.



I'm not criticizing anybody who does this because your bills are real, but I'm saying that everybody's number one career goal in my view is to get altitude on their own career.

Our goal is to climb up a figurative hill and look down at our career from altitude and see where we've been and where we're going. If you don't do that you run the risk of careening from one bad job to another, with painful stints of unemployment in between.

That's no good. You deserve much more from your career than that.

You deserve to have a career that celebrates your gifts. You have to run your own career to get a job that deserves you. You have to look forward and back, and know your value to employers.

You have to know what kind of Business Pain you solve, and not just what your skills are. You have to make your story a big part — the biggest part — of your brand or your pitch to employers and clients.

You have to be willing to take a deep breath and think of yourself as a consultant. When you're

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PEOPLELINK'S SHINING STAR OF THE YEAR



Each year, the U.S. celebrates the accomplishments of its contingent workforce during National Staffing Employee Week – September 19 - 25. In honor of National Staffing Employee Week, Peoplelink is happy to announce our *Shining Star of the Year*, Rasheeda lyanda.

Rasheeda has worked at Toyota Boshoku for nearly two years. She was hired on full time in February. Her responsibilities include the 200% and 100% inspection in multiple departments. Rasheeda's Supervisor, Brenda Godboldo, refers to Rasheeda as a reliable "go to" person who knows all of the processes and can work in any department.

While on the job, Rasheeda enjoys giving advice on defective parts. She is excited to do what she loves full time as part of a strong team. Rasheeda credits her own dedication and Peoplelink's help for her success.

Thank you to Rasheeda for your commitment to excellence and Congratulations on being Peoplelink's 2016 *Shining Star of the Year*!



From the President's Desk »

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employed somewhere, it just means that you only have one consulting client at the moment.

It's not a lifelong relationship, even if you have a contract. You can't relax into it and forget about the world beyond your cubicle walls. Falling asleep on your career because you have a fairly cushy work situation is the worst thing you can do.

You have to stay awake and

aware. You can get business cards for your new consulting business and give them out. That way you'll grow new muscles and see what kinds of pain and solutions show up in your field. You'll gain confidence by consulting whether you are consciously aware of it or not. You will change and grow.

You have to keep your network alive. Even if you can't see the point of networking, just go and meet an old friend or a new

acquaintance you met at a networking event, once a week or twice a month. Just go and have coffee. It won't kill you. It might be fun. Ask them about their life and career and tell them about yours. Build that networking muscle!

It's a new day and the old days are not coming back any time soon. We are all entrepreneurs now.

You will get hired into the right job when you know in your body what

you bring to employers or clients and why they need what you bring.

People hire people they trust to solve their problems. No one is impressed or inspired by desperation on a job-seeker's part. It's not what hiring managers are looking for. Take a deep breath and remember who you are, because you are mighty!



HR News

They did what? Surprise safety training goes horribly wrong, employer sued

by Christian Schappel

Violent incidents at businesses across the U.S. have been making headlines lately, and it has a lot of employers considering how to prep their staff for the unthinkable. But this is an example of how NOT to conduct training.

In response to the Sandy Hook Elementary School tragedy in Newtown, CT, in which a lone gunman fatally shot 20 children, administrators at the Pine Eagle Elementary School in Halfway, OR, formed a safety committee tasked with formulating plans on how to respond in an emergency to an intruder.

One of the things the committee, which was made up of administrators and school board members, decided to do was surprise teachers with an active shooter drill.

The drill was held on an in-service day, so only teachers (no students) were in the building.

During the drill, a school board member and safety officer entered the school with masks and starter pistols. One of them lit firecrackers inside the building.

BANG! 'YOU'RE DEAD'

The school board member found teacher Linda McLean alone in her classroom. He surprised McLean by pointed his pistol directly at her, firing his gun and saying, "You're dead" before running away. The gun was a loaded with .22 caliber blanks, so firing it made a loud noise and produced

smoke, but no bullet was fired.

Safety committee members said the drill was meant to test the teaching staff's "Run, Hide, Fight" responses.

McLean claims she thought she was going to die. Other teachers were alarmed as well. Two collided while running for the exit. One was injured. Another teacher wet herself.

McLean sued, claiming the incident caused her to suffer from severe emotional distress and post-traumatic stress disorder. She said she became distraught, shaken and mentally, physically and emotionally ill.

She charged the school district with intentional infliction of emotional distress and civil assault, along with claims that her federal constitutional rights were violated and two state common law claims.

EMPLOYER FACING DAMAGES

The school district fought to get her case dismissed on summary judgment. The court granted the district summary judgment on McLean's federal rights claims, but it said McLean's state law and emotional distress claims should go to trial. It also said McLean could seek punitive damages.

Now, the district is facing an expensive legal battle or settlement.

The court said a reasonable jury could conclude that the district committed intentional assault and could be found liable for intentional infliction of emotional distress.

The takeaway for employers: This lawsuit shows how dangerous and harmful springing disaster and workplace violence training on employees can be. Of course, it can be a good idea to prepare your employees for the unthinkable, but it's dangerous to put them in a situation that could produce a shock to their systems.

The New Workforce: Tips for Hiring On-Demand Workers

By Erica Feld

The on-demand economy is a buzz-worthy topic across the U.S. right now! If you aren't familiar with the wording, you are probably at least familiar with the term "sharing economy" or "gig-economy." Either way, it seems everyone from business owners to professors are weighing in on the pros and cons of this new workforce.

To understand the benefits of hiring on-demand workers, one must first get used to the idea that the old standards of recruiting full-time, 40-hour-a-week workers, are changing and they are changing fast. This has something to do with the fact that the on-demand economy is growing at lightning speed—by the year 2020, 7.6 million Americans will be working as providers in the on-demand economy, more than doubling the current total of 3.3 million.

Companies are slowly starting to crack the recruiting code and figure out that utilizing these on-demand workers is beneficial for a variety of reasons. While this new way of recruiting talent won't exactly work for every organization, it certainly has been working pretty well for others. The following are benefits of recruiting on-demand workers:

LOWER COSTS

Hiring on-demand workers is beneficial from a cost perspective. On-demand workers are classified as independent workers, meaning they are not salaried employees and are not entitled to company benefits.

Companies can also save money on office space as well because these workers usually work from home, from their local coffee shop, or wherever they please to carry out their tasks. On-demand workers are also paid on a project by project basis, meaning your company can save money paying for these workers on an as needed basis, instead of a yearly salary.



SCALABILITY

This is a plus for companies because while we all try our best to forecast demand, there is always the possibility that some outside factor or margin of error could offset our needs in an instant. With the on-demand workforce, you have the ability to quickly and seamlessly scale number of workers up or down rather quickly and without having to deal with corporate politics.

QUALITY/SKILLSET OF HIRE

Certain on-demand workers, namely the Baby Boomers who are retiring later and later, have years of experience under their belt. These workers are ready to tackle specific projects head on and with a certain gusto that full-time employees lose over time.

The same goes for Millennials who have

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been out of college for 5+ years. They are excited about what they do and can offer just as good, if not better, results than any full-time employee. Contrary to widespread belief, the on-demand worker is highly skilled, knowledgeable in their field, and professional!

FLEXIBILITY

Bottom line, on-demand workers are available and ready to work when you need them. If you want to get jump started on a project before or after typical work hours, or even if you have an exact time frame or deadline to meet, the on-demand workforce is a good solution. This is exactly why these workers got their name “on-demand”, because whenever you need them, they are available on-demand!

For employers who are looking to cut costs, hire skilled candidates, and save overall time with the hiring process, then turning to the on-demand workforce for recruiting talent is a great idea. The on-demand economy is still rapidly growing, and with more and more talented workers joining this easy-to-access, on-demand workforce each day, you’d be crazy not to rethink your hiring strategy.

Do You Have to Ignore Misconduct Uncovered During FMLA Leave?

By Kate McGovern Tornone

It’s an easy scenario to imagine: an employee goes out on leave and, when another employee takes on his work, she discovers performance deficiencies and maybe even misconduct. Is the employee’s job protected just because he is out on “job-protected” leave?

In *Olson v. Penske Logistics, LLC*, No. 15-1380 (Aug. 26, 2016), the 10th U.S.

Circuit Court of Appeals held that employers do not need to turn a blind eye to misconduct that is uncovered during an employee’s leave of absence. It determined that employers are free to implement discipline—up to and including termination—against employees on job-protected leave in such circumstances.

FACTS OF THE CASE

Kris Olson worked as a warehouse operations manager for Penske Logistics. He supervised about 30 employees and was responsible for hiring, moving and tracking inventory, inventory audits and more. During his tenure, he received mixed performance reviews and, on two occasions, was reprimanded for failing to follow procedures and instructions.

After 12 years with the company, he requested and received approval for FMLA leave. While he was out, however, his main client, Whirlpool, reported that a large amount of inventory was missing. Olson’s supervisor sent another warehouse manager to investigate and she uncovered what she deemed a “crisis.” She found that Olson’s inventory report had many discrepancies, that he was 567 audits behind schedule and that his employees were not properly trained.

The employer investigated further and found that Olson had lied about extra work performed for Whirlpool and had hidden inventory losses in “ghost stows”—fake storage locations—for 4 years. He also told his staff to report missing items as damaged, Penske determined.

His supervisor and the human resources department agreed that Olson should be fired. Because of incorrect information provided by HR, his supervisor believed his FMLA leave had not been approved. Penske sent him a letter stating that because of the deficiencies and because of his unapproved leave of absence, it was firing him immediately.

Olson responded that his leave had been approved and when Penske heard about its

mistake, it offered to postpone his termination until he had exhausted his FMLA entitlement. Olson did not accept the offer and filed suit.



COURTS WEIGH IN

Penske argued that Olson’s termination was unrelated to his FMLA leave and the U.S. District Court for the District of Colorado agreed, granting summary judgment for the employer.

Olson appealed, offering two arguments: (1) if he had not taken leave, he would have been present and able to defend his job performance and (2) Penske’s reason for his firing was pretext and he was actually fired for taking too much time off.

The appeals court, however, was not persuaded. While both of Olson’s arguments were plausible, they did not create a genuine issue of material fact, it said.

First, Olson offered no evidence that any defense he could have offered would have saved him from termination, the court explained. Second, no reasonable jury could conclude that Olson was fired for anything but the numerous and substantial instances of unsatisfactory performance that Penske outlined.

“There are no holes, no conflicting statements, simply nothing that indicates inaccuracies in Penske’s story,” the 10th Circuit said. “No evidence suggests that Mr. Olson could possibly have kept his job once his misconduct was discovered.”

EMPLOYER TAKEAWAY

The 10th Circuit’s opinion in Olson is in agreement with several other appeals courts. Earlier this year, the 11th Circuit ruled that Dollar General did not interfere with an employee’s FMLA rights when it refused to reinstate her after her leave; the employer was able to show that she was fired because of newly discovered misconduct, for which it would have fired her even if she had not been on leave (*Thomas v. Dolgenercorp*, No. 15-13399 (11th Cir. March 15, 2016)).

Other appeals courts have reached similar conclusions (see *Mercer v. The Arc of Prince Georges County*, 532 Fed. Appx. 392 (4th Cir. 2013) and *Cracco v. Vitran Express, Inc.*, 559 F.3d 625 (7th Cir. 2009)).

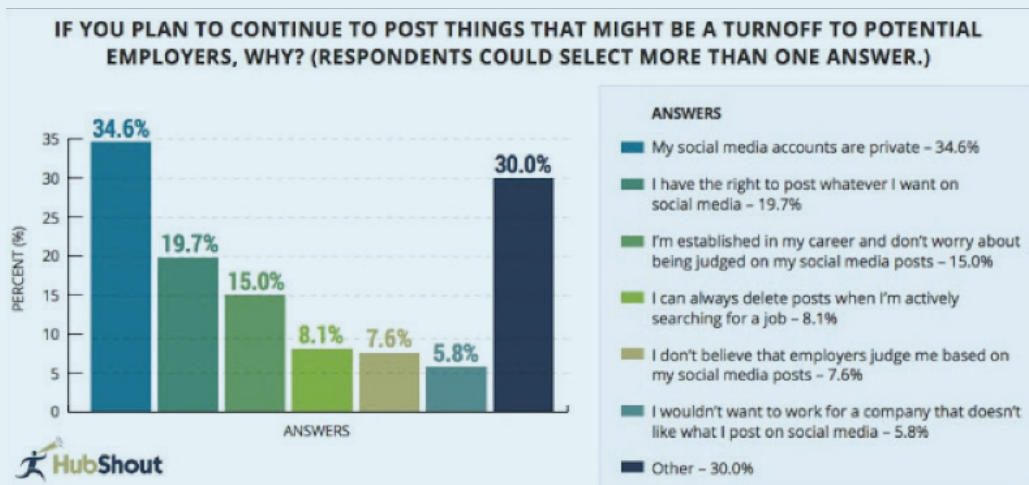
Importantly, the FMLA does not protect an employee from adverse employment actions; rather, it protects an employee from adverse employment actions taken because she or he exercised his FMLA rights.

While employers must ensure that discipline is not implemented in retaliation for an employee’s leave or leave request, these rulings are clear: just because misconduct was discovered during leave, doesn’t mean that the resulting discipline was implemented because of the leave.

The 11th Circuit noted in an earlier opinion (*Schaaf v. SmithKline Beecham Corp., d.b.a. GlaxoSmithKline*, 602 F.3d 1236 (11th Cir. 2010)) that an opposite conclusion would yield an absurd result: an employee who had committed a transgression could seek leave under the FMLA and hope that the employer discovers his actions during the leave, thereby preventing it from ever disciplining him for the misconduct. “[T]he leave would always be the but-for cause of the discovery of that evidence,” the *Schaaf* court said. “Such a laughable result is not supported by policy, by common sense, or, most importantly, by the statute itself.”

You're Fired!

71.6% Believe First Amendment Applies to Social Media



According to a June 2016 survey by HubShout, 41.2 percent of American workers say they believe that getting fired because of a social media post is an infringement of First Amendment rights.

"A Google search for 'fired because of social media' turns up a long list of results that are packed with stories proving that people have been fired for a variety of bad social media behaviors. The stories would certainly surprise those who believe they have an all-encompassing right to free speech and can't be fired because of something they've shared on Facebook or Twitter.

Social Media and Employment

Social media has become a valuable recruitment tool. According to social media entrepreneur Natalie Zaft, a whopping 94% of recruiters used social media to find talent in 2015. JobVite reports that 52 percent of recruiters say they always search for candidates' online profiles during the hiring process.

Furthermore, 55 percent of recruiters have reconsidered candidates based on their social profiles, with 61 percent of those reconsiderations being negative.

The social media scrutiny does not always stop once an individual is hired.

Think Before You Post

Rosemary Haefner, chief human resources officer at CareerBuilder says that, "social media is booming with networking opportunities and the chance to share your accomplishments. But it could also lead to the end of your career if used incorrectly." In fact, a survey by CareerBuilder found that that 18 percent of employers say they have dismissed employees because of something they posted on social media.

People absolutely do get fired because of content they've posted on social media.

When an American is fired because of a social media post, has his or her First Amendment right to freedom of expression been infringed?

What the First Amendment Really Says

People who believe that it is against the law for an employer to fire them for an offensive social media post misunderstand the scope of the First Amendment.

The First Amendment of the United States Constitution protects the right to freedom of religion and freedom of expression from government interference. The most basic component of freedom of expression is the right of freedom of speech. The right to freedom of speech allows individuals to express themselves without interference or constraint by the government.

The First Amendment says nothing about private employers.

State and federal government employees may have more protections. According to workplacefairness.org: Public employees work for the government. So, public employees do have protection from retaliation for exercising certain First Amendment rights. Courts have been cautious in this area, limiting the protection

to speech that is on matters of "public concern."

And, the National Labor Relations Board ruled that using social media can be a form of "protected concerted" activity. Employers have the right to address work-related issues and share information about pay, benefits, and working conditions with co-workers on Facebook, YouTube, and other social media.

While there are a few exceptions, getting fired for a social media post is typically not an infringement of First Amendment rights.

It Can Happen to You

34.6 percent of respondents to the HubShout survey are not concerned about employers or potential employers viewing their social media posts because their posts are 'private.'

Tom Risen of U.S. News & World Report has found plenty of data that proves that the notion of online privacy is an illusion.

Scott Kleinberg of the Chicago Tribune writes, 'It's easy to overlook potential consequences when you think that all you're doing is speaking your mind to someone in response to a tweet or Facebook post. Nine times out of 10, what you say is being read by a much wider audience and information about the person saying it is more widely shared than you'd ever imagine.'

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You're Fired!

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Kleinberg also shares this story that illustrates how a 'private' social media post can make its way to an employer: 'I read a story not too long ago where someone tired of being the subject of abusive Facebook comments reached out and complained to that person's

boss. The company subsequently fired the person.'

Post Freely. Beware the Consequences.

By and large, American people are free to post whatever they want on

social media. They're free to be provocative. They're free to offend, insult, and disparage others. They're free to share videos and photos of themselves that may indicate poor character or lack of judgment. But, American people take heed: do not depend on the First

Amendment to save you if you get fired because of a social media post.

Proposed Bill Would Make Salary History Questions Unlawful

By Ellen Gipko

Legislation that would prohibit employers from asking a job applicant to provide a salary history will soon be before Congress. The bill's aim is to even the playing field among men and women and minorities doing substantially the same work.

"Women and minorities often face discrimination in the job application process and in salary negotiations," said Rep. Eleanor Holmes Norton, D-D.C., in a news release. She is introducing the bill with co-sponsors Reps. Rosa DeLauro, D-Conn., and

Jerrold Nadler, D-N.Y.

A spokeswoman from Norton's office said the bill would be introduced in the House of Representatives this week or by early next week.

"Many [women and minorities] carry lower salaries for their entire careers simply because of wages at previous jobs that were set unfairly," Norton stated. "Our bill will require employers to offer salaries to prospective employees based on merit, not gender, race or ethnicity."

DeLauro pointed to Massachusetts' new pay equity law as an example

of "a bold step forward in closing the wage gap." Effective Jan. 1, 2018, the legislation prevents employers from asking job candidates about their salary history in interviews, making it the first state to enact such a law.

An amendment to New York City's Human Rights Law, introduced in August, would prohibit city employers from asking for or relying on a job candidate's salary history when making pay decisions.

And while a bill awaiting California Gov. Jerry Brown's signature—or veto—would not prohibit hiring

managers from asking job candidates about their current salary, it would ban employers from using that information to justify a pay differential between men and women performing substantially similar work.

One benefit of knowing a job applicant's current salary, according to a point-counterpoint article in the April 2016 issue of HR Magazine, is that it lets the hiring manager know if a candidate's current salary exceeds what the prospective employer is able or willing to pay.