Effective Employee Management for Agribusinesses

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Cultivating Culture

Dr. Bernard Erven
Professor Emeritus
Ohio State University

Outline

- What is culture?
- How do employees learn the culture?
- What is the difference between a traditional control culture and an employer/employee partnering culture?
- What is your vision of the culture you want to create?

Important questions

- Why is Andy so enthusiastic about Zack and his father?
- Why is Richard looking for a job?
- Why does Ted want to change what his father built?
- Could Ted lose Richard without ever knowing the real reason?
Organizational culture:
- Has big role in success or failure of a business
- No balance sheet has an entry for culture
- Yet culture can be a huge asset or a destructive liability

What is culture?
- Shared values and norms of behavior
  - No two countries, states, families or businesses can have the same culture

Understanding culture as a management tool
- It is the personality of the business
- Is learned by employees
- Affects how employees feel and act
- Never totally controls employees
- Can be changed by top management
- Is never bottom up
Culture = **Norms** + Values

- Norms are standard ways of:
  - Doing things
  - Acting
  - Reacting
  - Handling problems and situations
- Norms may be followed even if not understood

Culture = Norms + **Values**

- Values operate at three levels in the culture
  - Visible part
  - Expressed values
  - Core values
- In strong, positive cultures, managers and employees accept the values at all three levels without conscious choice.

Visible part of the culture

- How people dress
- Appearance of buildings and machinery
- Where and with whom people eat
- Way telephone is answered
- Way in which the organization celebrates successes
Expressed values

- “We trust our employees.”
- “We will improve the land.”
- “All ideas from employees are heard and considered.”
- “We help our neighbors because we know that someday they will gladly help us.”

Core values

- Rarely stated yet widely understood
- So deeply ingrained that questioning them would surprise employees
- Examples:
  - We love our cattle
  - Never cheat a landlord
  - Only essential work on Sunday

How do employees learn the culture?

1. Heroes
2. Language
3. Symbols
4. Stories
5. Rituals
Does culture make a difference?

- Ted wants to change the culture his father created.
- Richard is looking for a new job
- Zack and Andy want to continue the culture created by Zack's father.

*Culture must matter to these people!*

Contrasting organizational cultures

- Traditional control culture
  - Versus
  - Employer/employee partnering culture

Traditional Controlling Culture

Characteristics
- Centralized decision making
- Top-down communication
- Rules and procedures to control employees
- Minimization of labor costs
- Employees learn by doing
- No staff meetings or written performance evaluations
In controlling culture

Employees agree that these values are important in the culture:

- Being results oriented
- Being demanding
- Being careful
- Being rule-oriented
- Inflexible

In controlling culture

Employees disagree that these values are important in the culture:

- Being supportive
- Being innovative
- Taking individual responsibility
- Being team-oriented
- Security of employment

Employer/employee partnering culture

Characteristics

- Success for the business long-term is highest commitment
- Business helps each person to thrive
- Learning is never finished
- Communication is key to success
- Enthusiasm grows from a lively interest in the business
Employer/employee partnering culture

Characteristics (Continued)

- Fairness requires avoidance of bias, dishonesty, injustice and hearsay
- Trust and integrity from each person’s word being as good as a written contract
- Each person delivers more than promised
- Who first had a good idea matters not

In employer/employee partnering culture

Employees agree that these values are important in the culture:

- Flexibility
- Being supportive
- Risk taking
- An emphasis on quality
- Enthusiasm for the job

In employer/employee partnering culture

Employees disagree that these values are important in the culture:

- Being rule oriented
- Working long hours
- Intolerance
- Boss-centered
- Avoiding conflict
Returning to the opening prologue

We can easily imagine why Richard is looking for another job:
1. He had grown accustomed to a partnering culture.
2. He lived and thrived on the values he had learned.
3. Ted’s decision to change the culture is both threatening and disappointing to Richard.
4. He feels on the outside of a big change.

Concluding comment

- Top managers have the potential of making their culture into a long-term asset.
- They also have the potential to do great harm to the business through their mismanagement of the culture.
- The take-home question ➔ What is your vision of the culture you want to create?
Can You Manage Like Other Industries Do?

Tom Fuhrmann, DVM
DairyWorks Management System
April 3, 2007

You can manage like other industries if……..

• You understand management principles that are universal
• You structure your business
• You realize that people are your commodity
• Implementation techniques may differ
• Records to monitor people are as critical as monitoring animal performance
We need to better understand the principles of "MANAGEMENT"
DAIRY WORKS

SYSTEMS ......that are in control

PEOPLE ..........that implement systems correctly

MONITORING.......to assure that both people and systems are in control

DAIRY WORKS

SYSTEMS ......that are in control

PEOPLE ..........that implement systems correctly

MONITORING.......to assure that both people and systems are in control
DAIRYWORKS

Work can be defined as a SYSTEM that has structure:

- a series of related tasks is a process
- a group of related processes is a system

“The more we understand about work the more we can shape it and control it.”

Flow Diagram to “feed colostrum”
**DAIRYWORKS**

Organizing Work ....

2. Define the processes of the system

- Collect and process colostrum
- Prepare colostrum to feed
- Feed colostrum
- Record information

---

**DAIRYWORKS**

Organizing Work ....

3. Define the tasks

- Collect and process colostrum
- Prepare colostrum to feed
- Feed colostrum
- Record information

1.1 Milk and co-mingle 1st milk from fresh cows 2X/day
1.2 Measure aby’s with colostrometer
1.3 Store in nipple bottles (refrigerate)
1.4 Date bottles
2.1 Warm freshest colostrum when calf is born
2.2 Bring calf to barn to dip navel
3.1 Feed by suckling for 15 minutes
3.2 Force-feed by esophageal feeder after 15 minutes
4.1 Record date and hour
4.2 Record dam calf ID
4.3 Record feeder
4.4 Wash equipment
**DairyWorks**

**Organizing Work**

1. *Break work routines down into each step* (procedure)
2. *Evaluate each step for “correctness” and sequence* (analyze the tasks)
3. *Rebuild a better work routine* (system)

---

**DAIRYWORKS**

Systems are how your workers do…….

“**WORK**”

1. Better work routines can produce **better results**
   **OR**
2. Better work routines can maintain good results with **less cost**
DAIRYWORKS

SYSTEMS ......that are in control

PEOPLE ..........that implement systems correctly

MONITORING......to assure that both people and systems are in control

---

DAIRYWORKS

Personnel Management

Once you organize work, decide exactly “this is how we do it”, how do you get your workers to do it that way all the time?

• The individual worker

• Teams of workers
Affecting worker attitudes...how you can manage the individual:

• What you CAN NOT change:
  – Personal background
  – Self esteem
  – Previous experience

Managing the Individual Worker:

But what you can try to do is....

“Motivate” ............
an individual worker
DAIRYWORKS

Managing the Individual Worker ....

“Motive”: Some inner drive, impulse, intention, etc. that causes a person to do something or get a certain way

“worker”

“Motivate”: Creating an environment where people work toward a pre-determined outcome

“Manager”

Motivating Workers

Manager:
- Establish Goals
- Devise systems
- Train Workers
- Compare results with goals and Feedback

Worker:
- Learn work systems
- Bring the right “attitude”
- Work correctly
- Improve with feedback

Motivate! Motivated!
**DAIRYWORKS**

Managing the Individual Worker ....

*Extrinsic motivation:* Based on rewards or punishment

- *Controllable* “gasoline”
- *Intrinsic Motivation:* Based on pride, in work and accomplishment; inner drive

- *Uncontrollable* “fire in belly”

---

**DAIRYWORKS**

Managing the Individual Worker........

Extrinsic Motivation: “Incentives”

**PLUSES:**

1. *Forces managers to set goals*
2. *Managers measure performance*
3. *Sets clear standards for workers*
4. *Rewards extra work and interest*
DAIRY WORKS
Managing the Individual Worker

Extrinsic Motivation: “Incentives”

NEGATIVES:

1. Destroys “teamwork” // workers blame other workers
2. Workers try to “beat the system”
3. Workers can’t control circumstances that affect their bonus
4. Send signal: pay more just to do it right
5. Good effort but no bonus: de-motivate workers unexpectedly
6. Get bonus once, expect it all the time
7. “Sales personnel“ vs “Service providers”
8. Workers required to solve problems….appropriate?

Motivating Workers

Manager:
• Establish Goals
• Devise systems
• Train Workers
• Compare results with goals and Feedback

Worker:
• Learn work systems
• Bring the right “attitude”
• Work correctly
• Improve with feedback

Motivate! Motivated!
Affecting worker attitudes...how you can manage the individual:

- Hire the correct type of people
- Determine if there is “fire in their belly”
- Teach & Train “to your STANDARDS”
- Talk to them about results “Feedback”

Communication is Critical

- Talking with your workers is essential
- Bridge the language barrier
DAIRYWORKS

- Worker attitudes…...what managers CAN CHANGE is the workplace:
  - Compensation or hours
  - Clear Job Description
  - Feedback
  - Recognition/Incentives
  - Knowledge, training or skill level

---

DAIRYWORKS

- Worker attitudes…...what you CAN CHANGE is the workplace:
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DAIRYWORKS

Personnel Management

Once you organize work, decide exactly “this is how we do it”, how do you get your workers to do it that way all the time?

• The individual worker

• Teams of workers

DAIRYWORKS

There are TWO kinds of people in the world:

1. Leaders “TEAM”
2. Followers
**Lead:** To guide on a way, to direct the operations of an activity or performance, to go at the head of: be first, to tend toward a definite result (Supervisor, boss, coach).

**Follow:** To come after in order of rank or natural sequence (workers, players).

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**DAIRYWORKS**

**PRINCIPLE: ORGANIZE THE ENTERPRISE**

- **Owner/Manager:** Calvin
  - **Doctoring Crew Mgr.:** David
    - Asst. for Babies: Jerry
    - Asst. for >30 days: Frank
    - (Rick) (Frank) (James) (Harvey)
  - **Milk Mixing Mgr.:** Tony
    - Asst. for Calves: Arnold
    - (Joe Mavis)
  - **Grain Feed Mgr.:** Peder
    - Asst. for Calves: Julia
    - (Mel)
  - **Processing Crew Mgr.:** Jimmy
    - Asst. for Bulls: Roy
    - (Mavis)
  - **Maintenance and Relief:** Jacob
TEAM
of Workers

“A group of people with a high degree of interdependence geared toward the achievement of a goal or completion of a task; they recognize the need to work together.”

Do You Manage Your Workers as Teams?

- Players
- Coach
- Measure of Performance
- Field of Play and Rules of the Game
Responsibilities of a Boss

5 principles:

1. Know and understand work
2. Train workers
3. Monitor results:
   • records
   • observation
4. Focus workers:
   • positive reinforcement
   • motivation
   • retrain (when negative results occur)
5. Communicate:
   • upward to your boss
   • downward to your workers

You CAN manage like other industries if........

• You understand management principles that are universal
• You structure your business
• You realize that people are your commodity
• Implementation techniques may differ
• Records to monitor people are as critical as monitoring animal performance
Can You Manage Like Other Industries Do?

DairyWorks
MANAGEMENT SYSTEM
Being a Boss versus
Being a Friend

Dr. Bernie Erven
Professor Emeritus
Ohio State University

Introduction

“Do I want to be my employees' buddy or boss?”
Employers have the choice
Employees do not
The challenge is clear; the decision is not
Indecision, waffling and “it depends” confuses employees

More specifically – Who has the buddy/boss choice?

Every business
Starts with top managers
Supervisors have the choice only to the extent allowed by the organizational culture and rules
Family supervising family face the choice
A disclaimer

- Buddy/boss is a highly personal issue
- What works well in one business may not work well in another
- Difficult but possible to change the relationship with employees

Context of the buddy/boss choice in ag, hort & ranching businesses

1. Small business
2. Informal
3. Most everyone well known to everyone else
4. No union contract controlling relationships
5. Both family and non family

Given the context:

- The tendency is to be buddy not boss
- Seems easier to be buddy
- Employees assumed to prefer the buddy choice
- Buddy seems to fit family employees better
The guideline for most businesses

Be friendly with all employees; be buddies with no employees.

The guideline for a few businesses

Become a good buddy of each employee

Expect employees to become good buddies with each other

Hire only people who can and want to be close friends with their supervisor and coworkers

When may the “good buddy’ approach work?

- Friendly and charismatic top manager
- Few employees
- Low employee turnover
- Friendly relations & trust among family members
- Personality given heavy weight in hiring
- Excellent communication
- Clear and enforced rules as needed
Why the “friendly but not buddies” guideline?

1. Definitions
2. Expectations
3. Length of time

Definitions

Boss
- An employer or supervisor
- A person who exercises control over workers

Supervisor
One who:
- Watches and directs
- Keeps tabs on
- Keeps an eye on
- Keeps under surveillance

Note the harshness and impersonal tone
A quite different tone

Friendly – Favorably disposed; not antagonistic; warm; comforting

Friend – A person you know well and regard with affection and trust

Buddy – A good friend

Expectations

- What does an employee expect of an employer?
- What does an employer expect of an employee?
- What do friends expect of each other

Employer expectations of employees

1. Self-motivation
2. Search for a job and work environment that fits them
3. Willingness to learn
4. Commitment to the employer’s mission, core values and goals
5. Communication of their needs, concerns and ideas to the leader
6. Listening to the leader’s point of view
Employee expectations

1. Challenging work
2. Access to information
3. Increasing responsibility
4. Involvement in decision making
5. Feelings of personal accomplishment
6. Recognition for good ideas, hard work and caring about the family
7. Sense of importance to the business

Expectations of friends

- Help
- Understanding
- Forgiveness
- Honesty (but only to a limited extent)
- Forgiveness
- Time
- Informality

Friendship's length of time

- Long-term
- An investment in each other
- Sacrifice as necessary to keep the friendship going
Using “friendly but not buddies” guideline with family members

1. Business headquarters separate from residences
2. Separate business and family relations
3. Build close family relations outside the business
4. Separate business and family communication
5. Be fair and consistent in dealing with “cousin” generation

Overcoming the informality of small businesses

1. Conduct formal staff meetings
2. Provide feedback at least annually to each employee
3. Be consistent in policies, procedures, and family relations across all employees

Dealing with personal problems in friendly business

1. Avoid getting involved in personal problems
2. Be prepared to deal with real employee crises
A final guideline

Work hard at building friendships outside the business

Avoid resorting to the business for friends

Conclusion

Expect supervisors to be friendly with all employees

Expect supervisors to be best friends with no employee
DAIRYWORKS

MANAGEMENT:

SYSTEMS .... that are in control

PEOPLE ...... that implement systems correctly

MONITOR....assure results

Expect a lot from your employees!
Managing Workers (Hispanics)

- **Similarities:**
  - Workers need leadership
  - Explain what you want (teach)
  - Monitor
  - Motivate; discipline
  - Focus

- **Differences:**
  - Language barrier (how to explain, motivate, discipline)
  - “Standards”
  - Trust & Values
  - Want to know “how they are doing”
  - Value of money

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Responsibilities of a Boss

5 principles:

1. Know and understand work
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   - records
   - observation
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   - positive reinforcement
   - motivation
   - retrain (when negative results occur)
5. Communicate:
   - upward to your boss
   - downward to your workers

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Mexican Society

**Speaking Spanish:**

- You must “cross this bridge” (training and disciplining)
- Try to speak, but you “don’t have to” (relate to your workers)
- Bilingual Hispanic on your staff (translates and manages crew)
- Understand “head nod”
In Mexico, one is born “high” or “low.” A two class society, the very rich and the very poor and it’s believed that the poor are poor and the rich are rich because God ordained it that way.

(Mexican Society)

Rich vs. Poor:

- $ count?????????
- Socialism vs. Capitalism
- Expectations // Standards

Lead: To guide on a way, to direct the operations of an activity or performance, to go at the head of: be first, to tend toward a definite result. “Gringo Patron”

Follow: To come after in order of rank or natural sequence. “Mexican worker”
Mexican Society

Socialistic Society:
• Don’t EXPECT a Mexican worker to want to take on more responsibility for more pay!!!!
• Outline responsibilities of a higher position and explain the “consequences”!!!!
• Herdsman/Head Milker……
• Friendship, live together and are usually related……..

Mexican Society

Socialistic Society:
• Don’t EXPECT a Mexican worker to be efficient!!!!
  (e.g. digging hole)
• Don’t EXPECT him/her figure out the solution
  (intelligence vs. education)
• Set YOUR standards (e.g. their living conditions)
• Explain exactly what you want (e.g. training/followers)

Mexican Society

• CORRUPTION:
  • Don’t trust government!!!!
  • Don’t trust employer!!
  • Don’t trust neighbor!!
  • Family is OK!!!!
  • Watch out for the “Mexican Mafia”!!!
Remember that the family (familia) is very important!

Anything that reinforces social acceptance and belonging will be an effective motivator!

- Family dinner, picnic or barbeque
- Volleyball or soccer game
- Little league or soccer games for the kids
- Boxing matches on cable 😊

Mexican Fears:

- Fear of:
  - Loosing job!
  - Our police!!
  - Bosses, “Patrones” and not doing things RIGHT to please YOU!!!!
  - Friends are OK!!!!
Mexican Societal Respect

- Respect for:
  - Parents
  - Elders
  - Trusting boss
  - “Muy abigable”
  - Parent/Child respect for authority!!!!

Eye contact is a sign of honesty and integrity.

Lack of eye contact is a sign of respect.
Mexican people will shake hands, hug and touch as a sign of friendship. Touching another’s arm or shoulder during conversation is common.

Interact In Their Environment

Fear Causes:
1. Low Morale
2. Uncertainty
3. Low Trust
4. Resistance to Change
5. No Choice / Powerless
6. Self Rather Than Work Focus
The challenge of management is organizing work in such a way that you break down large jobs into small tasks. This will lead to improved performance and most importantly, *NO FEAR!*

*I hear …. I forget*

*I see …. I remember*

*I DO …I Understand!*

Develop Trust
No Idea Is A Bad Idea

I value & respect you!

You are important!

Rewards & Recognition

Thank You!

“There is no job so simple that it cannot be done wrong”
Hey Man, I’m proud to be a Mexican

Managing Cultural Differences
Why is compensation important?  
(for employers)

- It’s an issue that all employers have to eventually address
- It can be linked to most aspects of HR management: recruitment, evaluation, communication.

Why is compensation important?  
(for employees)

For employees, compensation is not just a function of what they are paid, but, ultimately, how they are valued.
Who is competing for ag labor?

- Farms
- Ranches
- Agribusinesses
- Any local employer who utilizes workers of similar competency

A compensation package isn’t about “dollars per hour” it’s about building a

*Total Rewards System*

Total Rewards System

- Compensation is the total of the benefit an employee receives from his or her work
  - non-monetary
  - monetary
- So, employer’s need to be concerned about the total value that an employee gets from his/her employment
**Non-Monetary Rewards**

- Career Rewards
  - Security
  - Career Development
  - Opportunity for Growth
- Social Rewards
  - Status Symbols
  - Praise and Recognition
  - Friendships

**Monetary Rewards**

**Indirect Compensation**
- Legally Required Benefits
  - Social Security, Unemployment, Disability
- Private Protection
  - Pensions, Savings, Insurance
- Paid Leave
  - Training, Sick Days, Holidays, Personal Days
- Life Cycle Benefits
  - Wellness Programs, Child Care, Elder Care, Moving Expenses

**Direct Compensation**
- Basic Salary
- Performance-Based Pay
  - Stock Options
  - Bonuses
  - Merit Pay
  - Incentive Pay
- Skill-Based Pay
Compensation Success:

It’s not about money.

It’s about meeting your employee’s needs

You won’t know until you Discuss Indirect Comp. Needs

• Health Insurance
• Paid Vacation
• Housing
• Child Care
• Retirement Planning

Benefit Importance

Paid vacation--1.29
Health Insurance--1.33
Retirement Plan--1.39
Bonuses--1.56
Paid Sick Leave--1.64
Profit Sharing--1.75
Ag Products--2.11
Housing--2.21

where 1 is very important and 4 is very unimportant
Downside of Non-Cash Incentives

• Employees should have an idea of the value of their compensation packages

• Different benefits have different values to different employees

Developing a competitive compensation package

• Understand the needs of your employees
  – communicate
  – review regularly

• Understand the current labor market

Determining Cash Wage

• Labor Market
  – a economic purist would say that there is never a labor shortage--only a wrong wage

• Business Objectives
  – recruit
  – retain

• Equity
Equity

• Internal Equity—fairness between employees in the same business

• External Equity—relative wage fairness between many farms or businesses.

If either internal or external equity is violated employees will adjust their performance.

Compensation and Wage Rates on Kansas Farms, 2001

research by K-State and the KS Farm Management Assoc.

• Information gathered on 189 farms, 446 employees

• Included all employees
  – Full-time, part-time, seasonal
  – Owners
  – Family Members

• To compare across farms, employees were assigned to one of 5 competency levels

Employee Competency

• Levels 1-5 as determined by an employee’s
  – Skill level
  – Supervisory Capacity
  – Authority to make decisions

• Defined in proceedings article
Survey participant information

- 13% of all employees were part owners
  - 63% of Level 5 employees were owners
- 34% of all employees were related to owners
  - 79% of Level 5 employees were related to owners
- 87% of employees were male
- Employees have, on average, 8.6 years tenure
  - 21.4 years w/current employer for Level 5 employees

Employee Compensation Results

<table>
<thead>
<tr>
<th></th>
<th>Employee Competency Level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All</td>
</tr>
<tr>
<td>Total Comp</td>
<td>28,188</td>
</tr>
<tr>
<td>Hourly Comp</td>
<td>10.13</td>
</tr>
<tr>
<td>Total Cash Wage</td>
<td>22,651</td>
</tr>
<tr>
<td>Hourly Cash</td>
<td>8.36</td>
</tr>
<tr>
<td>Hourly Wage Equivalent</td>
<td>8.08</td>
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</tbody>
</table>

Why does compensation for Level 5 employees drop off?

- No real explanation. Some possibilities include:
  - prevalence of family/owner employees
  - Level 5 employees are more long-term employees (21 years w/current employer as compared to 9 for Level 4s). Thus, not as subject to market pressure.
Hourly wage vs. hourly wage equivalent

- Hourly wage is a given value (hourly employees)
- Hourly wage equivalent is a calculated value (salaried employees)
- For lower levels, employees are more highly paid when receiving an annual salary.
- For higher levels, employees work more hours and are more highly paid when receiving an hourly wage.

Prevalence of benefits

- On average, full-time employees received $5,537 per year in non-cash compensation.
- Benefits became more valuable as competency increased
  - $2,456 average benefits for Level 1
  - $7,788 average benefits for Level 5
- Most common benefits (full-time) were
  - farm products (56%)
  - health insurance (38%)
  - bonuses (38%)

Bonuses and Incentive Plans

what not to do

- Avoid the “because I’m a nice guy” bonus
- Don’t create an incentive program that “uses the wrong carrots”
- Don’t outline a plan without input from employees
- Don’t
Bonuses should always be **EARNED**; they should never be **GIVEN**

**What do you want your Compensation Package to do?**
- Recruit new employees
- Motivate current employees
- Reward well-performing employees
- Minimize the risk of violating federal laws
- Build employee loyalty
- Any combination of the above

**What do you want your compensation package to say?**
- We value family
- We value longevity
- We value timeliness
- We value initiative
- We value extra effort
Everything about your compensation package sends a message.

Use the right carrots

- A compensation package must align with the business’s
  - mission
  - vision
  - values
- People will respond to compensation incentives (example: bonuses)
  - you have to use the right incentives to get the right responses

“Sometimes we try to fix people when it’s the system that stinks.”

Johanna Slan
“Using Stories and Humor”
Making it work

• Communicate with your employees
• Review your package regularly
• Be flexible and innovative

www.oznet.ksu.edu/employee
The Top Ten List of
What Every Employer Should Know
about Labor and Employment Law

By Shawn D. Twing
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Four Reasons You Should Care About
Labor and Employment Law

1. Your Employer Cares
2. Your Government Cares
3. Your Employees Care
4. You Should Care
Top Ten List

• 1. Use and Misuse of Contractors
• 2. Non-citizen Workforce
• 3. Know the Basics of Workers’ Compensation
• 4. The Bermuda Triangle
• 5. FLSA Agriculture Exemption

Top Ten Continued

• 6. Exempt vs. Non-exempt
• 7. Retaliation
• 8. OSHA General Duties Clause
• 9. Employment Related Torts
• 10. Employee Discipline
1. Know When the “Employee-Employer” Relationship Exists.

Wage, hour and benefits;
Payment of employment taxes;
Unemployment insurance;
Workers’ Compensation;
Eligibility to participate in employee benefit plan;
Employer liability for the wrongful acts of its employees;
Applicability of federal and state anti-discrimination laws.

Common Law.


2. “At-will” employment means that, with limited exceptions, employment for an indefinite term may be terminated at the will of either party with or without cause. This rule is tempered by exceptions including the following:
   a. An employer cannot discharge an employee for refusing to commit an illegal act at the employer's request.
   b. Federal, State and Local Anti-Discrimination statutes and ordinances.
   c. An employer must abide by its own agreements, policies and procedures that expressly limit its right to discharge employees.
   d. The Employee Retirement Income Security Act (ERISA) prohibits employers from discriminating against employees for purposes of interfering with an employee's ERISA rights e.g., discharging an employee to prevent the vesting of his/her pension benefits.
   e. Whistleblower Acts.
      1. Reports of Nursing Home Abuse - Section 242.121 of the Texas Health and Safety Code. This section prohibits retaliation, including termination, of the employment of any person who reports suspected abuse or neglect of a resident of a convalescent, nursing home or related institution.
      2. Reports of Health Regulation Violations - Section 161.131 of the Texas Health and Safety Code. This section prohibits retaliation, including termination, against any employee for reporting a violation of the law, regarding any hospital, mental health facility or treatment facility.
   g. Workers’ Compensation.
   h. Bankruptcy.
2. Know the Various Employment and Labor Law Statutes, Their “Magic” Numbers and Requirements

a. Age Discrimination in Employment Act ("ADEA").
   (1) Employers Covered: 20 or more employees.
   (2) Employees Protected: 40 years of age or older.
   (3) Prohibition: Discrimination as to terms or conditions of employment based, in whole or in part, upon the employee's age.

   **Special Note:** Supreme Court has adopted a "substantially younger" test.

b. Americans With Disabilities Act ("ADA").
   (1) Employers Covered: 15 or more employees.
   (2) Employees Protected: Employees with a "disability", history of a disability or those perceived by employers as being disabled.
   (3) Prohibition: Discrimination as to terms or conditions of employment based, in whole or in part, upon an otherwise qualified employee's disability, history of disability or perceived disability.

   **Special Note:** Employers are required to make reasonable accommodations to an employee's known disability, if possible.

c. Congressional Omnibus Budget Reconciliation Act ("COBRA").
   (1) Employers Covered: 20 or more employees.
   (2) Employees Protected: Participating employees and qualified beneficiaries.
   (3) Requirement: Employees and qualified beneficiaries are permitted to elect continuation coverage of group health insurance for specified periods. Employees pay the premiums for this coverage.

   **Special Note:** Employers (or insurers) are required to provide notices to employees and qualified beneficiaries of their COBRA election rights. Failure to provide the required notice leaves the election period open beyond the normal 60 days.

d. Equal Pay Act ("EPA").
   (2) Employees Protected: All employees.
   (3) Prohibition: Discrimination in wage rates between men and women who perform substantially the same work.

   **Special Note:** The job duties held by men and women employees do not have to be exactly the same to require equal wage rate. Employees may have disparate wage rates based upon a bona fide merit or seniority system or compensation based upon productivity e.g., commissions.
f. Fair Credit Reporting Act ("FCRA").
   (1) Employers Covered: All employees.
   (2) Employees Protected: All applicants and employees.
   (3) Requirements: Regulates the use of consumer reports for establishing a consumer's eligibility for hire, promotion, reassignment or retention.

   Special Note: The Act has detailed notice and authorization requirements for allowing challenges to reports.

g. Fair Labor Standards Act ("FLSA").
   (1) Employers Covered: All employers.
   (2) Employees Protected: All employees.
   (3) Requirements: Sets minimum wage/maximum hour requirements.

   Special Note: Current minimum wage is $5.15. Overtime is calculated on a per week basis. Non-exempt employees are entitled to time and a half for time worked over 40 hours.

h. Family Medical Leave Act ("FMLA").
   (1) Employers Covered: 50 or more employees in each working day of 20 calendar weeks of the current or the preceding calendar year.
   (2) Employees Protected: Employees who request leave for certain specified reasons and have worked a minimum of 1,250 hours within the previous 12 months of employment.
   (3) Requirements: 12 weeks of unpaid leave for (a) a serious health condition, or (b) birth or adoption of a child or the placement of a child in foster care. Employees using leave must be returned to the same or equivalent position. Taking FMLA cannot result in the loss of any employee benefit.

   Special Note: Employers can require employees to use paid leave as FMLA leave.

i. Immigration Reform and Control Act ("IRCA").
   (1) Employers Covered: All employers (anti-discrimination provision applies to employers who have 4 or more employees).
   (2) Employees Protected: All employees.
   (3) Requirements: Employers are required to verify employee's right to work in U.S. Act also prohibits discrimination on citizenship and/or national origin.

   Special Note: Documentation requirements must be followed exactly. Employers cannot require applicants to provide more proof of citizenship or lawful alien status than what is provided for in the Act.
j. National Labor Relations Act ("NLRA").
(1) Employers Covered: Most employers except federal, state and local governments, railroads and airlines.
(2) Employees Protected: All employees except agricultural laborers.
(3) Requirements: Provides for and regulates the collective bargaining process between employers and employees. The Act entitles employees to act as a group and to be represented by a union.

Special Note: Most employment issues are subject to and resolved by the collective bargaining agreement or "contract". Certain practices are subject to mandatory bargaining which means that the employer cannot unilaterally implement the practice without union participation e.g. drug testing policies.

k. Texas Labor Code.
Wage and Hours.
- Employers Covered: All employers.
- Employees Protected: All employees.
- Prohibition: Regulates pay days, minimum wage/maximum hours and provides means of resolving wage disputes.

Special Note: Non-exempt employees must be paid twice a month. Exempt employees once a month. If an employee is discharged, she/he must receive his/her final check within six days. If the employee quits, payment must be made at the next regularly scheduled payday.

(2) Prohibition on Discrimination.
(a) Employers Covered: 15 or more employees.
(b) Employees Protected: Employees of covered employers.
(c) Prohibition: Prohibits employment discrimination based on age, race, color, sex, religion, national origin, and disability.

Special Note: Courts can provide more protection under state law than what is available under federal law. Texas courts generally follow federal precedent, but this is not true of all jurisdictions e.g., Nevada, Oklahoma and California.

(3) Occupational Health & Safety ("OSHA").
(a) Employers Covered: All employers with one or more employees.
(b) Employees Protected: All employees of covered employers.
(c) Requirement: Establishes safety and health standards in the work place.

l. Title VII of the Civil Rights Act of 1964 ("Title VII").
(1) Employers Covered: 15 or more employees.
(2) Employees Protected: All employees who work for covered employers including former employees.
(3) Prohibition: Discrimination as to terms or conditions of employment based, in whole or part, of employee's race, color, sex, national origin, or religion.

m. Uniformed Services Employment & Reemployment Rights Act ("USERRA").
(1) Employers Covered: 15 or more employees.
(2) Employees Protected: Veterans or current service personnel.
(3) Prohibition: Discrimination as to terms or conditions of employment based, in whole or part, upon veteran's status or military salary.

n. Worker Adjustment & Retraining Notification Act ("WARN").
(1) Employers Covered: 100 or more employees.
(2) Employees Protected: All employees of covered employers.
(3) Requirements: Regulates mass layoffs and relocation of work sites.
   (1) Race based statute which provides equal rights to all persons regardless of race or ethnicity.
   (2) Prohibits race discrimination by employers because employment has been held to fall within the statute's "make and enforce contracts" provision.
   (3) Claims brought under section 1981 do not have to be submitted to the EEOC.
   (4) All employers are covered under section 1981 regardless of the number of employees they have. The caps on compensatory and punitive damages found in Section 42 U.S.C. 1981a do not apply.
   (5) This section only prohibits intentional discrimination; therefore, recovery for claims of disparate impact do not apply.

Three Types of Unlawful Employment Discrimination

1. Disparate Treatment
   (intent to discriminate required)
   A. Individual
   B. Systemic
2. Disparate Impact
   (no intent to discriminate required)
   A. Uniform Policy
   B. Impacts (in an adverse way) members of a protected class
3. Unlawful Harassment
   A. Harassment on account of a person’s race, color, national origin, disability, religion, age, veteran status (some states include “sexual preference”)
   B. Sexual Harassment
Common Pitfalls

1. Equal Pay Act
2. Pregnancy Discrimination Act
3. Title VII
   A. Religious discrimination
   B. National origin discrimination
   C. Unlawful harassment

Not So Common Pitfalls

1. National Labor Relations Act
2. Immigration Reform and Control Act
3. Fair Credit Reporting Act
3. Know the Wage and Hour Requirements of the FLSA and Texas Pay Day Act

The payment of wages and hours is regulated by both federal and state law. The applicable federal statute is the Fair Labor Standards Act ("FLSA"). The applicable state statute is found in Texas Labor Code, Chapters 61, 62, 63 and 64.

A. Texas Labor Code

While most wage and hour issues are governed by federal law, Texas statutory law governing wages and hours should not be overlooked. State law generally governs how wages are to be paid. The term "wages," for purposes of the Texas Labor Code, is defined as compensation owed by an employer for labor or services rendered by an employee regardless of how the compensation is calculated and vacation pay, holiday pay, sick leave pay, parental leave pay, or severance pay owed to an employee under a written agreement with employer or under a written policy with employer.
Section 61.001 et seq. of the Texas Labor Code provides the following basic requirements:

a. Employers are required to pay wages either in United States currency, by a negotiable instrument, or by an electronic transfer of funds. Payment of wages in any other form must be agreed to by the employee in writing. Section 61.016.

b. Employers may not withhold or divert any portion of an employee's wages unless ordered to do so by a court of competent jurisdiction, is authorized to do so by state or federal law, or does so by written authorization from the employee and the deduction is for a lawful purpose. Section 61.018.

c. Employers are required to designate pay days in accordance with Section 61.011. Employees who are exempt from the overtime provisions of the FLSA must be paid at least once a month. Employees who are not exempt from the FLSA must be paid at least twice a month. If an employee is paid on a salary basis, incremental payments must be equally prorated as nearly as possible. Section 61.011.

d. If the employer fails to designate pay days in accordance with 61.011, the employee's pay days are the first and fifteenth for each month.

e. If an employee is paid wages based upon commission or bonuses, such payment is due according to the terms of the agreement between the employer and employee or the applicable collective bargaining agreement.

f. If an employee is discharged, the employer is required to pay an employee, in full, all wages due within six days from the date of discharge. If an employee's employment is terminated for reasons other than discharge, the employer must pay the employee by the next scheduled work day. Section 61.014.

g. An employee's assignment of his/her wages or salary is not effective against the employer and any suit for wages or salaries that are unearned at the time of the assignment is executed unless the employer is given written notice of the assignment immediately after execution of the assignment. Section 63.001.

h. Employers are required by Texas statutory law to pay an employee a rate of not less than $3.35 an hour unless the employee is exempted by Section 62.005. Section 62.005 provides that an individual may be employed at a wage less than the applicable minimum wage, but not less than 60% of the minimum wage if the person's earning or productive capacity is impaired by age, physical or mental deficiency, or injury; or the person is over the age of 65. (I don't recommend doing this.)
B. FLSA

In 1996, Congress made significant changes to the FLSA. These changes have been summarized below for your review.

1. Increase in the Minimum Wage. Beginning on October 1, 1996, the minimum wage was raised to $4.75 an hour. The minimum wage increased to $5.15 an hour beginning on September 1, 1997.

2. Computer Employee Exemption. The FLSA was amended to provide an exemption for computer professionals which takes them out from under the Act's minimum wage and minimum hour/overtime provisions of the Act. See 29 U.S.C. 206 and 207.

Section 29 U.S.C. 213(a)(17) of the Act provides:

(17) An employee who is a computer-systems analyst, computer programmer, software engineer, or other similarly skilled worker whose primary duty is -

(A) The application of systems-analyst techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(B) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and relating to user or system design specification;

(C) The design, documentation, testing, creation or modification of computer programs relating to machine operating systems; or

(D) The combination of duties described in subparagraphs A, B, and C, the performance of which requires the same level of skills.
29 U.S.C. 213(a)(17). Accordingly, this exemption, by its broad scope, will exempt a substantial portion of workers in the computer technology industry. However, there is a cost. Employees who are classified as exempt under this provision must be paid in excess of $27.63 an hour.

c. Opportunity Wage. One of the recent amendments to the FLSA creates a provision to allow the payment of an "opportunity wage." This "wage" may be paid to qualified employees who are under twenty years of age. It was passed as a result of pressure put on Congress by the fast food industry and other industries who regularly employ teenagers to counter-balance the rise in the minimum wage. Section 29 U.S.C. 206 provides the following:

(g)(1) In lieu of the rate prescribed by Section (A)(1), any employer any employee of such employer, during the first 90 consecutive calendar days after such employee is initially employed by such employer, a wage which is not less than $4.25 an hour.

(2) No employer may take any action to displace employees, (including partial displacement, such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in paragraph (1).

(3) Any employer who violates this subsection shall be considered to have violated Section 15(a)(3).

(4) This Section shall apply only to an employee who has not obtained the age of 20 years.
However, employers are prohibited from any adverse action against existing employees in order to take advantage of the opportunity wage.

C. Coverage Under The FLSA

1. Employees qualify for FLSA coverage if their employment meets by either the "enterprise" test or the "employee" test.

2. The "enterprise" test is based upon the employer's activities. To qualify, an employer must have two or more employees engaged in interstate commerce and have a gross annual volume of business of at least $250,000. When these conditions are met, all employees are covered by the FLSA. 29 U.S.C. 203(r),(s).

3. The "employee" test examines the worker's impact on interstate commerce. If an individual engages in interstate commerce or helps to produce goods for interstate commerce, that employee is covered by the FLSA. 29 U.S.C. 206(a). Employees who are covered by the Act for part of a work week are entitled to minimum wage and overtime benefits for the entire week. 29 U.S.C. 206-7.
D. Application of the FLSA

The protections granted to workers by the FLSA are generally interpreted broadly and construed to the benefit of employees. Tennessee Coal & Iron Co. v. Muscoda Local #123, 321 U.S. 590, 597-98 (1944). The burden of proof is on the employee in a back-wage suit and on the Department of Labor in a suit to restrain violations of the Act. Beliz v. W. H. McLeod & Sons Packing Co., 765 F.2d 1317, 1330 (5th Cir. 1985). However, the employer has the burden of proving it is entitled to any claimed FLSA exemption. Idaho Sheet Metal Works v. Wirtz, 383 U.S. 190, 209 (1966). In addition, if an employee produces any evidence of overtime hours worked, that evidence may be considered as evidence of FLSA violations unless the employer refute that proof by using payroll and hour records.

E. Minimum Wage Requirement

As noted, the FLSA requires that all non-exempt employees be paid the applicable minimum wage. This rate has been raised to $5.15 an hour effective September 1, 1997. 29 U.S.C. 206(6)(a)(1).

Employers may pay non-exempt employees a fixed salary rather than by the hour. Interpretive Bulletin, 778.113 et seq., However, if the employer chooses to do this, the salaries paid must equal or exceed the total number of hours worked multiplied by the applicable minimum wage plus overtime.
F. Overtime Pay

All non-exempt employees whose hours in excess of 40 during any work week are entitled to receive one and a half times the regular wage for each hour of overtime accumulated. 29 U.S.C. 207(a).

Non-Productive Hours. A common violation occurs when employers fail to compensate their employees for time spent on "non-productive hours." This situation usually occurs when an employer requires its employees to report early for shifts or otherwise remain available even though the employee is not working. According to the Department of Labor, the FLSA requires that an employee be compensated for "all hours worked." The Department has interpreted "hours worked" to include:

- All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed work place; and
- All time during when an employee is suffered or permitted to work whether or not he is required to do so. 29 C.F.R. 778.223.
Consequently, the Department has determined that working time is not limited to the hours spent in active productive labor, but inclusive time given by the employee to the employer even though part of the time may be spent in idleness. 29 C.F.R. 778.223. This includes activities such as waiting for work, remaining on call, traveling on an employer's business, or to and from the work place, and meal and rest periods. Such time is calculated as work time for determining both overtime and minimum wage requirements. To avoid compensation for idle time, employers must show that the employee can effectively use the time for personal purposes.

Unauthorized Overtime. Another common problem occurs when employees work "unauthorized" overtime. Employers must take affirmative steps to prevent the accumulation of such overtime, otherwise they will be responsible for paying it. For example, in Tew v. Food Lion, Inc., 756 F.Supp. 238 (E.D.N.C. 1991), an employer had a policy for all of its stores that employees were not to work "off-the-clock." Apparently, the employees were aware of the rule and were told that violations of it would be subject to disciplinary action. Even so, because the Court found that the employer knew that its employees were, in fact, working "off-the-clock," it awarded the employees overtime pay and liquidated damages.
Compensatory Time. Overtime calculations must be made on the basis of each work week as a separate unit of time. With very few exceptions, overtime may not be averaged from one week to another, nor may a long week be offset against a short one. Interpretive Bulletin, 778.103 et seq.

(1) If an employee is employed for a fixed workweek, the employee may be given compensatory ("comp") time during the pay period to offset the amount of overtime work. 6A Wage & Hour Man. (BNA) 94:1002.

(2) Comp time must be computed on the basis of time and a half for each overtime hour worked. Four hours of overtime equals six hours of comp time. 6A Wage & Hour Man. (BNA) 94:1002.

(3) If an employee does not take all comp time he or she is entitled to, the paycheck must include overtime pay for all such hours. The extra overtime cannot be carried over into the next pay period. 6A Wage & Hour Man. (BNA) 94:1002.
INTRODUCTION TO WHITE COLLAR EXEMPTIONS

The Basics:

1. Fair Labor Standards Act
2. Exemption vs Non-Exempt
3. United States Department of Labor

Non-Exempt Employees

Minimum Wage
Regular Rate
40 Hour – Straight Time
Excess of 40 Hours in a Work Week – Time and Half
Work Week = Seven Consecutive Work Days
Exempt Employees

Exempt employees are not paid overtime on the 40 Hour Workweek basis

Exempt employees must:
1. Be paid on a salary basis
2. Must meet the definition of a overtime exemption

Employees are presumed to be non-exempt and Employers have the burden to establish an exemption

Revised White Collar Exemption Rules

• Fair Pay Act
• Effective August 24, 2004
• Increased the minimum wage for exempt employees
• Revised the “duties”
Administrative Employees

(1) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer of the employer’s customers; and

(2) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Learned Professionals

(a) To qualify for the learned professional exemption, an employee’s primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. This primary duty test includes three elements:
(1) The employee must perform work requiring advanced knowledge;

(2) The advanced knowledge must be in a field of science or learning; and

(3) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Executive Employees

(2) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

(3) Who customarily and regularly directs the work of two or more other employees; and

(4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.
Minimum Salary Levels Increased

Minimum Salary Level Increased: Under current rules, an employee earning only $155 a week can qualify as a “White Collar” employee not entitled to overtime pay. The Department’s proposal would raise this minimum salary to $425 a week—an increase of $270 a week and the largest increase since the Fair Labor Standards Act was passed by Congress in 1938.

Salary Basis Test

An exempt white-collar employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. 29 C.F.R. § 541.118(a).
Partial Week Deductions

a. During initial and terminal weeks of employment
b. Deductions for personal absences of a day or more (other than sickness)
c. Deductions for personal absences for sickness or disability
d. Family Medical Leave Act
e. Violations of Safety Rules of Major Significance

Disciplinary Deduction

The DOL will allow deductions from the salary of exempt employees for full-day absences taken for disciplinary reasons, such as sexual harassment or workplace violence. Currently, only hourly workers' wages are subject to such deductions. The proposal retains the "salary basis" rule prohibiting deductions from exempt salary for partial-day absences.
Highly Compensated Employees

a. Employees that earn at least $100,000 annually
b. Performing any one or more of the exempt duties articulated in the Regulations
c. If these two factors are met, no detailed analysis of the employee’s job duties will be necessary.

Safe Harbor

a. Employer has a policy prohibiting improper deductions
b. Employer has not repeatedly and willfully violated the policy or continued to make improper deductions after receiving employee complaints.
H. Record Keeping

Section 29 C.F.R. 516.2(a) interpreting of the FLSA requires employers to compile and keep certain records on their employees. These records must contain the following information:

a. name and identifying number or symbol;
b. home address;
c. date of birth if under the age of 19;
d. occupation;
e. time of day and day of week on which employee's workweek begins;
f. regular hourly rate of pay for weeks when overtime is worked, basis on which wages are paid, and amount and nature of each payment not included in the regular rate;
g. hours worked each work day and total hours worked each workweek;
h. total daily or weekly straight-time earnings or wages;
i. total weekly overtime excess compensation;
j. total additions to or deletions from wages paid each pay period;
k. total wages paid each pay period; and
l. date of payment and the pay period covered by payment.

Each employee for whom an exemption is claimed must be provided sufficient information in which to calculate their hours worked and wages. 29 C.F.R. 516.3.

Generally, records must be preserved for two or three years depending upon the nature of the type of information contained in them. 29 C.F.R. 516.6. Failure to keep accurate records places the burden upon the employer to disprove the number of hours claimed by an employee seeking recovery for unpaid wages. Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).
9. Enforcement and Penalties Under the FLSA

The wage and hour requirements of the FLSA are enforced by the Wage and Hour Division of the Department of Labor.

The Division may inspect all employee records employers are required to keep pursuant to the FLSA and applicable regulations.

a. The Secretary of Labor may initiate a lawsuit against employers accused of violating any provision of the Act.
b. Employees may bring suit in a court of competent jurisdiction.
c. Employees may recover unpaid wages, unpaid overtime wages, liquidated damages and mandatory attorneys' fees.
d. Civil penalties of up to $1,000 may be assessed for each violation depending on the size of the business and the severity of the violation.
e. An employer may also face criminal proceedings for serious and willful violations of the FLSA. Criminal penalties include up to a $10,000 fine or six months imprisonment.
4. Know the Basics Concerning Employee Testing

1. Applicant Testing.
   a. These tests cannot have the purpose discriminating against protected classes of employees or applicants. These tests cannot have the effect of disparately impacting protected classes of employees or applicants.

Drug Testing.

   a. The policy must be reasonable.
      1. The policy should be in writing;
      2. The policy should specify under what circumstances testing will be required;
      3. Employees should sign statement acknowledging receipt of the policy and agreeing to abide by its terms;
      4. The policy should specify specifically what constitutes a violation of its terms and state potential penalties for violations.

   b. Adherence to the policy should be made a condition of continued employment.
Polygraph Testing.
   a. Employee Polygraph Protection Act ("EPPA").

   b. The EPPA effectively removes polygraph testing as a means of conducting investigations of employees and applicants.

5. Know the Common State Law Claims that can be Asserted Against Employees.

The following claims are commonly brought against individual managers and co-employees in sexual harassment cases:

Assault & Battery
   (1) In Texas, "battery" occurs when an individual intentionally or knowingly causes physical contact to the person of another and the individual either knew or should have known that the other person would regard the contact as offensive or provocative. “Assault” occurs when you place a person in apprehension of such conduct.

   (2) Note the element of intent which is required.
b. Invasion of Privacy

Arises from the constitutional right to privacy defined as the right to be left alone, to live a life of seclusion, to be free from unwarranted publicity. Billings v. Atkinson, 498 S.W.2d 858 (Tex. 1973). This definition has been refined into four separate torts which could arise in the employment law context.

1. Unreasonable intrusion upon the seclusion or private affairs of another;
   i. Inspection of an area or item without consent and which an employee has a reasonable expectation of privacy, i.e., purses, wallets, bags, briefcases etc.
   ii. Inquiries into the personal and private life of another which would be highly offensive to a reasonable person.

2. Unreasonable publicity given to an aspect of one’s private life in which the public has no legitimate concern;
   i. Information given in confidence.
   ii. Information obtained during an investigation.

3. Publicity that unreasonably places another in false light before the public; and the false light would be highly offensive to a reasonable person.
c. Unwarranted appropriation of one's name and likeness.

Rarely found in the employment law context.

d. Defamation
   (1) Elements:
       (a) A defamatory statement made by the defendant about the plaintiff;
       (b) Communicated orally (slander) or in writing (libel) to a third party;
       (c) Without legal excuse, i.e., privilege;
       (d) Resulting in harm to the plaintiff or actionable per se.

Qualified Privilege exists for statements made by the employer to other persons in the employment context, where such persons have a "corresponding interest or duty to which the communication relates." Can be lost if the statement is made with malice - knowledge that the statement was false or making the statement with reckless disregard for its truthfulness.
e. Intentional Infliction of Emotional Distress

(1) Elements:
(a) The defendant acted intentionally;
(b) The conduct was extreme and outrageous;
(c) The actions of the defendant caused the plaintiff to suffer emotional distress;
(d) The emotional distress suffered by the plaintiff was severe.
(e) To be actionable, the "extreme and outrageous conduct" must be so outrageous in character and so extreme in degree that it goes beyond all possible bounds of decency, and can only be regarded as atrocious and utterly intolerable in a civilized community.

f. Interference with Contractual Relations

(1) Elements:
(a) There was a contract subject to interference;
(b) The act of interference was willful and intentional and without justification;
(c) Such interference was a proximate cause of plaintiff's damages;
(d) Actual damages occurred.

This cause of action can exist even in the context of employment "at-will."
Negligent Supervision. It is possible for an employer and/or its managers to be held liable for damages sustained by an employee as a result of conduct which constitutes sexual harassment caused by the employer's and/or manager's negligence. The employer and/or manager must act "reasonably" in hiring and supervising employees. The cause of action for negligent hiring, retention and supervision requires proof that:

1. The employee was unfit for hiring;
2. The employer knew or should have known the employee was unfit;
3. The employer could foresee that the employee in his/her employment would come into contact with the plaintiff, creating a risk of danger to the plaintiff;
4. The employer's negligence was a proximate cause of injury to the plaintiff;
5. The plaintiff was injured.

The controlling case in Texas is Shutters v. Dominos Pizza, Inc., 795 S.W. 2d 800 (Tex. App. - Tyler 1990) in which the court recognized a cause of action for negligent hiring, training, and supervision. In that case, the plaintiff was sexually assaulted by a co-worker and brought a negligence action against the employer. The reasoning used to establish this cause of action may be extended if an employee who has a known proclivity to engage in conduct which constitutes sexual harassment is either hired or retained despite this knowledge.
g. Retaliation

Both Title VII and Section 21.051 of the Texas code make it unlawful for an employer to retaliate against an employee who brings a complaint of sexual harassment or one who cooperates in the investigation or in proceedings relating to a complaint.

42 U.S.C. 2000e-3(a) provides that:

It shall be an unlawful employment practice for an employer to discriminate against any of its employees or applicants . . . because [the individual] has opposed any practice made unlawful [under Title VII] or because he made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing . . .
Section 2.058 of the Texas Labor Code provides:
An employer . . . commits an unlawful employment practice if the employer . . . retaliates or discriminates against a person who, under this chapter:
1. opposes a discriminatory practice;
2. makes or files a charge;
3. files a complaint; or
4. testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

Acts of retaliation may include termination, transfer to a less-desirable position, demotion, or any other act or omission on behalf of the employer which causes the employee detriment and was motivated by the employee's bringing a complaint or participating in an investigation.
Retaliation may also be found with respect to conduct aimed at a former employee. Such conduct includes false reference, malicious prosecution (civil or criminal), threats and abuse.
Introduction

- You have choices about:
  - Leading
  - Delegating
  - Helping your employees develop
- You can continue to fine tune or you can transform

The Question

- Do you want to transform how you lead with the intent of transforming your organization and people?
- Asked a different way:
  - Do you want to become a transformational leader?
Why transformational leadership?

- How often I hear
  - “My biggest problem is labor.”
  - “Employees frustrate me more than anything else.”
  - “People will only work hard to take care of what is theirs.”

- But sometimes I hear:
  - “I wouldn't trade my people for anybody else’s.”
  - “We just don’t any serious employee problems.”
  - “We are where we are because everybody cares about the business and each other.”

Two questions

- What is transformational leadership?
- Is it a realistic alternative for you to consider?
Turn on the “hazard lights”

Transforming employees and the business requires:
1. Action by top managers
2. Passion for your vision of what the business can be
3. A long-run commitment to employees

Leadership

- Influencing what others do
- Human resource managers are leaders because they influence:
  - What employees do
  - When they do it
  - How well they do it
  - With what attitude they do it

How do managers lead?

- **By action** → Conscious choices about influencing worker behavior

Or

- **By inaction** → Leaving employees free to make the choices about their behavior
Transformational leadership

- A particular way of practicing active leadership, i.e., taking charge
- The result of choices that may not be “natural” or easy for the manager
- Leadership to change employees and the business

Some characteristics of transformational leadership

1. Leaders provide vision for the business and key role of employees
2. Leaders succeed through major changes that involve employees
3. Leaders gain respect, support & trust

More characteristics of transformational leadership

4. Empowered employees receive extraordinary training and coaching
5. Leaders promote teamwork without loss of personal attention to each employee
The foundation for transformational leadership

An absolute conviction by managers that the business and employees can be changed.

“Here-we-go-again” leadership is the alternative

- Managers prefer routine change rather than dramatic change
- Managers value technical skills more than leadership and people skills
- Managers not employees are responsible for the business
- Performance comes from monetary rewards
- Managers expect employees to be self-interested

Becoming a transformational leader

- Have a clear and bold vision
- Accept the role of change agent
- Hire employees based on their self-motivation and previous accomplishments
Becoming a transformational leader (Continued)

- Emphasize communication with every employee
- Delegate responsibility and authority
- Encourage teamwork

Becoming a transformational leader (Continued)

- Reinforce early successes
- Stay in close contact with individuals
- Take advantage of charisma to inspire employees

A note about charisma

- Personality and charm that appeals to employees causing them to want to please the leader
- A powerful motivational tool if you have it; terribly difficult to attain if you don’t have it
Becoming a transformational leader (Continued)

- Help people reach their personal goals
  - Compliments their commitment to the goals of the business
  - Personal goals can be a second source of motivation for employees

Three questions to conclude

1. Do you see a need to transform your business?
2. Do you have a compelling vision of what your business could be?
3. Do you have a passion for the role of employees in transforming your business?

*If yes to all three, transformational leadership may be for you!!*
Effective Training

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Turnover--the vicious cycle

Someone Leaves

Remaining employees work harder

An exhausted boss hires a “warm body”

Employees work harder to train the new person

Turnover is hard on everyone.

• Turnover is expensive
• Turnover is risky
  – essential tasks not done
  – tasks done poorly or late
  – costly mistakes
• It’s exhausting for key people who have to take up the slack
How do you break the turnover cycle?

1… Consider the position and the business
2… Build a pool of applicants
3… Evaluate the applicants
4… Make your selection
5… Hire and train

Training

Giving people the tools they need to be successful in their jobs

If you don’t have time to do something right the first time, how are you going to find time to do it a second time?

--this is never more true than when talking about employee selection
How Training Helps to Reduce Risk

• Provides employees with knowledge and skills that are essential for good performance and safety
• Improves employee attitudes toward procedures
• Helps to reduce performance errors
• Can be used to help employees adapt to changes
• Promotes best use of resources (less waste)
• Boosts motivation and reduces turnover by building employee confidence, reducing frustration, and fostering a sense of teamwork and unity

Building Empowerment Through Accountability

• It all begins with job design and job description
  – “I know my job is…”
• Have clear and obtainable goals for the…
  – Individual
  – Unit
  – Business
• Monitor those goals, if they’re being met, the employee is up to the challenge. If the employee lags, you may have to reevaluate your strategy

Job Description

• Basic framework for all HRM practices
• Combines job analysis and specification to outline the entire position
• Establishes goals and objectives
• Always subject to change—should evolve with the employee and the job
**Job Analysis**

- The process of describing and recording aspects of the job
- Details the work that is done through
  - observations
  - interviews
  - recommendations of experts
  - work journals
- Should answer basic questions
  - physical and mental requirements
  - list of tasks to be performed
  - organizational chart

**Job Specification**

- A compilation of the abilities, skills, knowledge, or licenses needed to do the job
  - mathematical skills
  - physical work standards
  - Drivers Licenses
  - equipment skills
- A “laundry list” of skills and abilities

**Example Job Description**

- **Title:** Machinery Operator
- **Position Summary:** Operate machinery related to crop production. Also, perform regularly scheduled machinery maintenance and emergency repairs.
- **Qualifications:** Experience with machinery and mechanics.
- **Goals & performance objectives:** Maintain a professional attitude and demeanor. Have equipment ready and operational when needed. Be prepared to work long hours during crunch times. Maintain an injury-free workplace.
**Who needs training?**

- Employees who are new to the business and industry
- Employees who have experience but are new to your business or site
- Employees moving to new positions within the business or those being given new responsibilities
- Any employee who would benefit from learning or improving skills

**Why Training is Important**

- Training gives people the tools and knowledge they need to be successful in their jobs.
- People who don’t feel comfortable performing their jobs are more likely to leave, resulting in turnover and the need to do even more training
- Training is one vital step in creating a safer workplace.

**Effective Training…**

- Is planned in advance
- Has specific learning objectives that answer:
  - What will be learned?
  - How will it be learned?
  - What level of performance is expected?
- Is delivered in an environment that minimizes interruptions and distractions and encourages learning
- Is evaluated to measure effectiveness
**Beyond Training...Development**

- Training should not stop with the initial transfer of job skills.
- All employees need periodic refresher training to increase the breadth and depth of their job knowledge.
- Developmental activities may be used to prepare employees for future positions.
- Employees moving into supervisory positions in particular need specialized training and development to help them move beyond technical skills.

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**Training Teaches**

- **Who** does the job
- **What** the job is
- **When** the job must take place
- **How** a job is performed
- **Where** the job fits in respect to the overall business
- **Why** the job is important

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**Preparing to Train**

- Decide who will be conducting each portion of the training process.
- Establish the training objectives (what will be learned) and the timeline (by when).
- Refer to the Job Description to make sure the training process will prepare the new hire to do everything that is asked of him/her.
- Set times and methods for evaluating the trainee’s progress.
Who Conducts the Training

• Business Owners
• Supervisors
• Unit managers
• Coworkers

• Successful training is always a team effort!

Training vs. Orientation

<table>
<thead>
<tr>
<th>Training</th>
<th>Orientation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Focuses on skills and knowledge</td>
<td>Focuses on social and/or non-technical elements of the position and business</td>
</tr>
<tr>
<td>May last up to one full year</td>
<td>Will usually last one month</td>
</tr>
<tr>
<td>Should occur for both current and existing employees</td>
<td>Typically occurs only for employees new to business or site</td>
</tr>
<tr>
<td>May have formal and informal elements</td>
<td>May have formal and informal elements</td>
</tr>
</tbody>
</table>

Orientation

• Forms and paperwork
• Tour of facilities
• Introductions
• Business history
• Business overview
• Establishment of a “mentor relationship”
Mentors vs. Trainers

**Mentors**
- “Show people the ropes”
- Help ease the transition
- Help people find their place both in the business and in the community
- Have peer-based relationships
- May be officially assigned, or the relationship may develop naturally
- May also be responsible for all or a portion of the new hire’s training.

**Trainers**
- Teach people how to do their jobs
- Help people to develop the skills to perform their job functions safely
- Have no responsibility to the trainee beyond the context of the job
- Are usually assigned by a manager
- May or may not have a mentor role as well

Learning Styles

- **Watchers**—prefer to be shown and learn best by demonstration
- **Readers**—prefer to read written instructions and learn best when left alone with materials
- **Doers**—learn best by doing and learn best from trial and error
- **Sensors**—need to understand the meaning of the entire procedure and how the steps fit together


Tell-Show-Do-Review

- **Tell** the learner how and why the procedure is performed
- **Show** the learner how to perform the procedure by physically demonstrating
- **Do** allow the learner to perform the procedure while you observe
- **Review** the process the learner went through, recognize areas where the learner performed well and highlight areas for improvement

Effective Training Personnel Management Conference April 2007
Tips for Trainers

• Successful trainers take the time to recognize the learning style of the person they are trying to train.
• They should adapt their teaching style to meet the learner’s preference when possible.
• Be creative. Adding variety to the training process will keep the learner interested and engaged.
• Note that many people learn best when a combination of learning styles are used.

Cross-Training

• Teaches employees a respect of other aspects of the operation
• Prepares employees for emergency situations when they must fill in for coworkers or take on temporary assignments while the business is short-staffed.
• Allows employees to understand why they perform tasks that their department may never see any benefit from

How long should a training period last?

• The official training period for new employees should be no shorter than one full production cycle.
• Ideally, training would continue for at least 365 days.
• Training, in some form, should be a constant priority for your business.
Professional Development

• Make time for training on new topics, or refresher courses on basic topics, for all employees
• Consider this an investment in the value of your people
• Remember that training is often seen as a reward for strong performance
• Professional development is one key to improving professional behavior

The Test of Communication

Everyone in your operation should be able to say:

• I know what’s going on.
• I know what to expect.
• I know how I am doing.
• I know how we are doing.

By providing comprehensive training, regular evaluations, and maintaining communication as a core value, your business should pass this test with flying colors.

discussion
Current Developments Regarding Compliance Issues with a Non-Citizen Workforce

SHAWN D. TWING
SPROUSE SHRADER SMITH P.C.

The INA and IRCA

- The Immigration and Naturalization Act (INA) requires employers to hire and/or retain those persons authorized to work in the United States.
- However, the Immigration Reform and Control Act of 1986 (IRCA) makes it unlawful for employers knowingly to hire undocumented workers or for employees to use fraudulent documents to establish employment eligibility.
Authorized Non-Citizens


Authorized Non-Citizens

- Employers are required to treat all job applicants equally, whether they are U.S. citizens or non-citizens.
- This means that employers may not discriminate in hiring, firing, recruiting, or referring for a fee, nor are employers permitted to retaliate against an employee who has filed a discrimination charge or participated in an investigation.
Current H-2A Process

• Currently, the H-2A process is cumbersome and expensive. A detailed source of information, including forms and instructions, may be obtained on-line at www.dol.gov. A detailed examination is beyond the scope of this presentation; however, a brief description is provided below.
• Generally, employers must satisfy two criteria to hire nonimmigrant workers when filing an application with the USCIS:
  • 1. The employer must show that able, willing, and qualified US workers are not available at the time and place needed
  • 2. The employer must show that an adverse effect on wages or working conditions of similarly employed US workers will not result from the employment of foreign workers

H-2A Process

• 1. *Who may file an application for an H-2A visa?*
  - An agricultural company or employer who expect a shortage of U.S. workers needed to perform temporary or seasonal agricultural labor or services
  - An authorized agent filing on behalf of an agricultural employer
  - The employer may be an individual proprietorship, a partnership or a corporation. A collective of agricultural producers may file as either a sole employer, a joint employer with its members, or act as an agent on behalf of its members.
H-2A Process

2. What steps must employers follow to obtain workers via the H-2A process?

- First, two copies of the ETA-750 are filed, of which one should be sent to the appropriate Department of Labor ("DOL") region, and the other to the respective state workforce agency ("SWA") for the state in which the work is sought. This application has to be submitted at least 45 days before the H-2A temporary workers are needed and it also has to be approved by the DOL before the starting work date. The application fees, which must be paid by the employer, include $100 base fee plus $10 for each position certified, up to a maximum of $1000.

- Second, recruitment efforts follow, which are directed by the SWA for H-2A positions in one of three ways: the SWA refers candidates to the employer (with the employer using the state's electronic data bank), the employer conducts independent recruitment, or the recruitment is conducted after the SWA certifies the applications. Generally, referrals come from the state agencies. Employers are required to hire US workers who apply for work until half of the contract period is over.

- Third, following the recruitment period, a decision is made regarding certification. The SWA subtracts the number of US workers successfully referred from the total number of workers requested by employers to calculate and certify the remaining job openings.

Once certification is granted, the application is then filed with the DOL national processing center, which it may be filed for multiple unnamed workers. As they become available, however, the DOL must be provided with names. Finally, following DOL approval, the workers can then apply for visas at the appropriate consulate office.

3. What might be some reasons for which the DOL might not issue certification?

- One pitfall preventing certification is if the DOL determines that US workers have filled all the job openings, or for example, if the DOL determines that H-2A candidates have been offered better working conditions than their US counterparts. Another reason preventing certification could be if a strike or a lockout results, or if the employer is in significant violation of the H-2A program with the previous two years. Yet another block could be if the employer fails to show that H-2A workers will be covered by workers compensation, or if the employer fails to comply with the recruitment efforts.
H-2A Process

4. How long are the H-2A visas valid?
   - Generally, the H-2A visas are valid for a one year maximum. Extensions of up to one year, however, are possible but with a maximum of three years. After the alien has spent three years in the US under the H-2A status, then the alien must leave for six months before continuing H-2A employment. Subsequent to this time, however, the alien can reenter the US in any status not based on the performance of agricultural work.

5. How do employers calculate workers’ earnings?
   - Usually farm workers receive either an hourly wage or are paid by the piece. Under the H-2A program, however, workers have to be offered a wage equal to that of US workers. In the past, this has been interpreted to mean the higher payout of the following: a) the prevailing industrial wage in the relevant labor market, b) the state or federal minimum wage and c) the “adverse effect wage rate” (“AEWR”).
   - For workers earning money by the piece, an employer must pay any difference between worker earnings and the AEWR. Additionally, on or before each day the H-2A worker is paid, the employer must provide the worker with an earnings statement listing total earnings, hours of work offered versus actually worked, and whether the worker is paid hourly or by the piece.
   - What benefits are employers required to provide the workers?
   - Transportation to and from the workers’ temporary home to the workplace
H-2A Process

- When the contract period is up, transportation home or to their next workplace
- Housing to all workers who do not commute, which must be inspected by the Department of Labor as well as meet minimum federal standards for temporary labor camps
- Either three meals a day or facilities in which the workers can prepare food
- Any tools and supplies necessary to perform the work

• Workers compensation insurance where required by state law; if state law does not require it, the employer must provide equivalent insurance

Agricultural Job Opportunities, Benefits, and Security Act of 2007

• The Agricultural Job Opportunities, Benefits, and Security Act of 2007 (“AgJOBS Act of 2007”) was filed on January 10, 2007.
• Among other things, the Act provides for the establishment of so-called "blue card status" upon any undocumented worker who: “(1) has performed agricultural employment in the United States for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2006; (2) applied for such status during the 18-month application period beginning on the first day of the seventh month that begins after the date of enactment of this Act; (3) is otherwise admissible to the United States; and (4) has not been convicted of any felony or a misdemeanor, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.”
2007 AgJOBS Act Continued

- Directs the Secretary to adjust a blue card alien (and spouse and minor children) to permanent resident status if the alien has fulfilled specified periods of agricultural employment.

- Amends the Social Security Act to exempt blue card aliens from prosecution for social security-related identity or payment false statements if such conduct occurred prior to the granting of blue card status.

- Amends the Immigration and Nationality Act to revise H-2A visa (agricultural labor or temporary or seasonal services) provisions. Replaces the existing labor certification requirement with a labor attestation requirement containing: (1) a description of the nature and location of the job; (2) the job's expected beginning and ending dates; (3) the number of jobs; and (4) specified labor assurances respecting job opportunities covered by collective bargaining agreements and non-covered job opportunities.

Types of Immigration-Related Discrimination

- Citizenship status discrimination refers to unequal treatment because of citizenship or immigration status.

- National Origin discrimination refers to unequal treatment because of nationality, which includes place of birth, appearance, accent, and can include language.
Compliance with the INA’s Anti-Discrimination Provisions

- Let the employee choose which documents to present in the I-9 process as long as the identity and work authorization forms are included in the acceptable list.

- Accept documents that appear to be genuine.

Avoiding Employment Discrimination Based on Nationality or Citizenship Status

- Treat all people the same in announcing the job opening, taking applications, interviewing, offering the job, verifying eligibility to work, hiring, and firing.
- Avoid blanket policies requiring citizen only hiring or requiring that applicants have particular immigration status.
- Give out the same job information over the telephone and use the same application form for all applicants.
- Base decisions about firing on job performance and/or behavior and not appearance, accent, name, or citizenship status of your employees.
Unauthorized Non-Citizens

- Remedies in these cases are not necessarily the same as cases with authorized non-citizens or U.S. citizens.
- For instance, awards of backpay to undocumented workers have been disallowed because such an award would represent wages that undocumented workers could not legally have earned. See Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137 (2002).
Compliance Issues with a Non-Citizen Workforce

Personnel Management Conference 148 April 2007
Compliance Issues with a Non-Citizen Workforce

"GREEN" I-688 "TEMPORARY RESIDENT"

Front: White background, green header bar. Gold I.N.S. seal becomes visible when tilted under normal light.

Back: Green outline of the U.S. The word "VOID" is capitalized and underlined.

Bearer may temporarily live and work in the U.S. until the expiration date cited on the card.

"RED" I-688 "EMPLOYMENT AUTHORIZATION"

Front: White background, red header bar and yellow interlocking wavy lines. Gold I.N.S. seal becomes visible when tilted under normal light.

Back: Red outline of the U.S., Alaska and Hawaii. The word "VOID" is capitalized and underlined.

Bearer may work in the U.S. under the terms and conditions cited on the card.
I-9 Compliance:

- **What to do**
- **When to do it**
- **What not to do**
### Documents Under Section A of I-9

1. U.S. Passport (unexpired or expired);
2. Certificate of U.S. Citizenship (form N-560 or N-561) - Forms issued by the INS to individuals who: 1. derived citizenship through parental naturalization; 2. acquired citizenship at birth abroad through a United States parent(s); or 3. acquired citizenship through application by United States citizen adoptive parent(s); and who have applied for a certificate of citizenship;
3. Certificate of Naturalization (form N-550 or N-570) - Issued by the INS to naturalized United States citizens;
Section A, Cont.

4. Unexpired foreign passport, with I-551 stamp or attached form I-94 indicating unexpired employment authorization - A form I-551 stamp is a stamp on an unexpired foreign passport received by the legal non-citizen upon entry into the United States. Form I-94 is an arrival-departure record issued by the INS to non-immigrant aliens;

Section A, Cont.

5. Permanent Resident Card or Alien Registration Receipt Card with photograph (form I-151 or I-551) - Forms issued by the INS to lawful permanent aliens;
6. Unexpired Temporary Resident Card (form I-688)- Issued by the INS to aliens who are granted temporary resident status under legalization or special agricultural work program;
7. Unexpired Employment Authorization Card (form I-688A) - Issued by the INS to applicants for temporary resident status after their interview for legalization or special agricultural worker status;
Section A, Cont.

8. Unexpired Reentry Permit (form I-327) - Issued by the INS to lawful permanent resident aliens before they leave the United States for a 1 to 2 year period;
9. Unexpired Refuge Travel Document (form I- 571) - Issued by the INS to aliens who have been granted refuge status; or

Documents Under Section B of I-9

1. Driver’s License or I.D. card with photograph;
2. I.D. card issued by any state (including District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands) or by local governments as long as it contains a photograph or other identifying information such as name, date of birth, sex, height, color of eyes, and address;
3. School I.D. card with a photograph;
4. Voter’s registration card;
Section B, Cont.

5. U.S. Military card or draft record;
6. Military dependent’s I.D. card;
7. U.S. Coast Guard Merchant Mariner Card;
8. Native American tribal document; or
9. Driver’s License issued by a Canadian government authority.

For person’s under the age of 18 who are unable to present a document listed above:
10. School record or report card;
11. Clinic, doctor, or hospital record; or
12. Daycare or nursery school record.

Documents Under Section C of I-9

1. U.S. Social Security card issued by the Social Security Administration;
2. Certification of birth abroad issued by Department of State (form FS-545 or DS-1350) – Form FS-545 is issued by the U.S. Embassies and Consulates overseas to United States citizens born abroad. Form DS-1350 is issued by the U.S. Department of State to United States citizens born abroad;
Section C, Cont.

3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of United States bearing an official seal;

4. Native American tribal document;

5. U.S. Citizen I.D. Card (form I-197) – Issued by the INS to United States citizens;

Section C, Cont.

6. I.D. card for use of resident in the United States (form I-179) – Issued by the INS to United States citizens who are residents of the United States; or

7. Unexpired employment authorization documents issued by DHS (other than those listed under List A).
Three Major Pitfalls:

“Green Card Only”

“Citizens Only”

“Document Abuse”

No Match Letters

• What to do if you receive a no-match letter from Social Security
  - Advise the employee
  - Monitor the employee’s attempts to correct
  - Follow-up with Employee
  - Make final decision after a reasonable time
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