

Employment Practices Compliance Systems Can Help Provide Support to HR

Ken Thrasher

There is little question that workforce needs and the 21st century workplace are changing at a rapid pace. Keeping up with the magnitude of change has been challenging at best for human resources (HR) departments. Yet, according to Kathleen S. Barclay, vice president of global human resources for General Motors, “There has never been a more important time in any company to have a very strong, active HR organization. HR can have so much impact on the way the company works, how the culture feels and the type of talent it has both now and in the future. HR has a huge role to play in helping senior leaders shape the culture and make sure that culture is driving business outcomes.”⁽¹⁾

Barclay, along with a contingent of other top HR leaders, believes that “HR is primed to lead knowledge-intensive companies into the future.” In a 2002 survey ⁽²⁾ conducted by Wayne Broadbank, clinical professor of business at the University of Michigan, he found that HR professionals in high-performing firms demonstrate certain competencies that directly contribute to corporate leadership and organizational success.

- Strategic contribution to culture, change, decision-making and market-driven connectivity
- Personal credibility with HR peers as well as business managers
- HR delivery in staffing, development, performance management and managing and measuring the impact of global HR practices
- Business knowledge, including what contributes to the organization’s fiscal stability, how all departments interrelate, and what the organization’s industry challenges are
- Knowledge of HR technology and how to leverage it for HR practices that enhance overall corporate value

HR professionals who embrace and strive for these competencies will indeed help shape a sound culture that drives business success. Applying them to employment practices compliance will allow HR professionals to improve the overall workplace culture, including employee morale and internal communications, while increasing the ability to address three significantly troubling corporate issues:

- Employment-related claims risk reduction
- Rising costs of employment practices liability insurance (EPLI)
- Corporate governance

These areas of concern are diverting HR's attention in a reactive fashion, taking more of its already strained time in attempts to put out fire after fire. There is no question such a scenario is frustrating and contributes to a wearisome cycle of ineffective long-term problem solving. The questions are, then: How did things get so bad and what can be done to reverse the situation?

MANAGING THE HR FUNCTION IN LITIGIOUS TIMES

It is clear that today's workplace is more litigious than ever. As companies are obliged to lay off workers or even to close their doors, the nightmare of employee litigation is turning into a major risk. Disgruntled workers typically allege discrimination based on sex, disability, age, race or religion; wrongful termination; invasion of privacy; and wrongful demotion or failure to promote. In a survey conducted by the Society for Human Resource Management, 53 percent of companies have been named as defendants in employment-

related lawsuits — 90 percent of the lawsuits brought were by former employees.³ And, the potential expense of lawsuits causes some companies to be wary of hiring and firing. They simply cannot afford to make a mistake — or even risk the perception of a mistake — that could lead to claims. Current statistics paint an alarming picture of the frequency and severity of workplace claims:

- Employee lawsuits have risen 400 percent in the past 20 years to the current level of up to 6.5 claims per 1,000 employees annually.⁴
- According to *USA Today*, more than 450 employment lawsuits are filed in the United States every day.⁵
- The most common targets for federal discrimination claims are private employers with between 15 and 100 employees (41.5%); second are private companies with an excess of 500 employees (23.9%); and third are private companies with between 100 and 500 employees (18%).⁶
- The cost of such a lawsuit can be a staggering \$50,000 in attorney fees alone, with the average jury award exceeding \$250,000.⁷

In addition, HR managers are bombarded by state and federal regulations — which are being created and/or amended more quickly than companies can implement them. Currently, there are countless Federal and state laws and hundreds of regulations that apply to almost every relationship in the workplace. It's a vicious cycle: the more complex the regulations, the more difficult it is for HR managers to comply with them, which in turn dramatically increases the company's risk exposure.

Adverse publicity from these claims can also lead to intangible losses that include reduced productivity and employee morale, tarnished public image and loss of investor confidence. No matter the magnitude of the problem, these issues swallow up numerous hours of human resource managers' valuable time as they attempt to reduce exposure risk through appropriate proactive measures.

A sluggish economy and severe competition have complicated HR management and put terrible pressure on corporations to be profitable. Yet, profit margins become compromised when income is diverted to expenses such as employment practices liability insurance (EPLI). Due to the increase in the frequency and severity of employment-related claims and low investment returns in a down economy, EPLI providers are losing money, causing premiums to skyrocket, and less coverage is being offered, even to companies with clean records. Risk transference is no longer an affordable option for most organizations.

THE NEW RULES OF CORPORATE GOVERNANCE

A corporation's ability to evaluate and address risk exposure becomes moot, however, when questionable business practices remain. A quick glance at newspaper coverage of the high-profile scandals proves that all too often, companies have set aside good corporate values in favor of the bottom line. These scandals only add to the tribulations of HR professionals, who are on the front line in the effort to promote sound corporate ethics.

In fact, since the wave of corporate scandals erupted last year, a financial “perfect storm” has hit U.S. companies: loss of investor confidence, shareholder lawsuits, strict new legislation and, as previously mentioned, astronomical liability insurance rates. All companies are now under pressure to reassure their stakeholders--including employees, partners and customers-- that they run their businesses ethically, transparently, and with accountability at all levels. Broad new legislation such as the Sarbanes-Oxley Act requires companies to overhaul their policies relating to the collection and disclosure of financial information. This law also affects an organization’s operational structure and functions. Although company officers are ultimately responsible for maintaining internal controls to ensure the integrity of their processes and data, the new legislation applies to all. Employees have been empowered through increased whistle-blower protection; therefore, companies must set up procedures for employees to report fraudulent activities anonymously.

In addition to the challenges outlined above, HR executives must also maintain fair, harmonious workplace environments that employees expect and deserve. As the workforce becomes increasingly diverse, employment practices compliance becomes essential to that harmony. At the same time, HR’s charge has been to promote common sense processes and practices to ensure that corporate values are upheld, risk is reduced and profitability is enhanced.

FINDING ANSWERS IN EMPLOYMENT-PRACTICES COMPLIANCE

The drastic increases in frequency and severity of employment-related claims and skyrocketing insurance costs have brought renewed attention to employment-practices compliance and corporate governance infrastructure. This attention has given rise to systems that, when successfully implemented, can address the prevailing workplace issues that thwart success. Employment-practices compliance systems (EPCS) are guiding corporations in integrating the information and tracking needs of training, human resources, risk management and legal departments. These systems allow HR professionals to visibly demonstrate the core competencies that allow them to leverage their role and contribution to business strategy.

An EPCS is an interactive, online tool that gives management an effective method of increasing the level of workforce compliance — aimed at 100 percent. High compliance not only builds employee stability, but also can successfully defend against legal challenges through systematic documentation. This same type of system can be used to comply with new and existing corporate governance regulations, such as the Sarbanes-Oxley Act.

HR managers know that risk management and compliance are processes, not documents. Because an EPCS contains the four core elements of an effective compliance program — orientation, training, documentation and reporting — it is flexible enough to handle almost any area of risk exposure while adhering to virtually any regulatory requirement.

Through its monitoring and reporting capabilities, an EPCS can provide the information necessary for HR managers to accurately evaluate the effectiveness of enterprise-wide compliance. It also proactively addresses prevailing problem areas.

EPCS IN ACTION

Qsent, a technology company focusing on applications for real-time contact information located in Portland, Oregon, recently adopted new EPCS technology. For Fran Garbayo, the company's senior vice president of human resources, the system promises relief from the masses of paper that have traditionally accompanies the compliance process.

"Our compliance philosophy is straightforward," explained Garbayo. "We want to do the right thing by our employees, and by doing the right thing, we'll be in compliance. The employee practices compliance system provides a framework for controlling the compliance-related paper that's a natural by-product of the compliance process."

Using Qsent as an example, the system works like this: Attorneys at the EPCS provider monitor Oregon state and federal employment law for changes that affect companies like Qsent. When a change is mandated, Qsent's HR department is alerted of the change by the EPCS. The department is then provided with a package of integrated information that includes an explanation of the change in law in layperson's terms, including information on how it affects the company, suggested new policy, supervisory guidelines, FAQs, relevant forms, and training assessments.

Once Qsent managers review and approve policy language, all employees are notified of the new policy via e-mail, and provided with training assessment materials to measure employee comprehension. Employees acknowledge their understanding of the new policy via a secure, third-party website. In addition to the general policy notification, supervisors receive guidelines for implementing the policy, so they know how to help employees understand what the new policy really means to them as an individual. The system also provides an automated tracking process that enables Garbayo and his staff to efficiently follow up with employees who have not acknowledged the policy change.

Perhaps most significantly, Qsent can capture all system interactions, including training scores, in a central repository through each step of the compliance process. From this repository, they can easily assess how well each employee understands the new policy and which employees may benefit from further training by running quick reports of real-time information. Flexible reporting capabilities pinpoint potential areas of weakness so they can be addresses prior to an incident, or provide the means to defend against frivolous lawsuits should an incident occur.

For Kimberly Sullenger, director of finance and administration at Pixion, a Pleasanton, California-based provider of hosted and installed Web-conferencing products, using a Web-based compliance system has lowered legal bills and reduced administrative redundancies. "If a compliance-related issue came up in the past, I'd reach for the phone to call our attorneys," Sullenger noted. "Now, I can become better informed before calling them by reviewing the law in relation to our policies and guidelines through the website our provider built for us. In the past, I've also used Lawroom.com to keep up to date on developments in the law. Since we've adopted a comprehensive EPCS that is customized

for our industry, I can go to one place to stay current with regulations and then immediately distribute information and track compliance activities.”

A Less Litigious Work Environment

An EPCS can create a benchmark for current levels of risk exposure. A fully implemented EPCS demonstrates a “standard of care” in educating employees about company policies and procedures, such as workplace discrimination, corporate guidelines, sexual harassment, hiring and firing regulations, and so on. As mentioned earlier, when improperly addressed, these issues can increase a company’s vulnerability to a lawsuit.

An EPCS can serve as the first line of defense against frivolous lawsuits. When such a system is in place, HR managers gain peace of mind knowing that typical areas of concern — such as harassment and discrimination — are being addressed throughout the organization. Through education, training and real-time monitoring, a comprehensive compliance process reduces the likelihood that a lawsuit will be filed, thereby reducing frequency of claims. Furthermore, because the company can demonstrate that it has applied fair and consistent practices among all employees, an EPCS provides substantiated documentation in defense against a lawsuit and shows “good faith efforts,” thereby reducing the severity of claims awards.

Reduced Employment Practices Liability Insurance Rates

The good news here is that insurance carriers have offered better rates and/or more comprehensive coverage to companies using an EPCS because they see the potential for fewer claims. According to Rick Betterley’s October/December 2002 edition of *The*

Betterley Report, “The frequency of claims bothers underwriters more than the ultimate cost of those claims.” It stands to reason then that when corporations can reduce the potential for claims as well as the actual number of claims, they become a more desirable client for the insurer.

To that end, an EPCS enables companies to provide actual risk data to insurers, who in turn are able to perform an accurate qualitative analysis of the actual risk levels of their insureds. The result is improved ability to predict risk exposure. As insurers become better able to evaluate the risk exposure of current and potential insureds, they will be able to set reasonable policy rates and offer packages that correspond with the actual needs of the EPLI market and individual company clients.

Improved Corporate Governance

The inherent structure of an EPCS creates a natural demonstration of ethical operations, accountability and transparency. In so doing, it fosters an environment of mutual trust between the company and its stakeholders. It keeps corporate standards and practices above board and promotes flexibility and adaptability to meet evolving state and federal regulations as well as stakeholder demands. An EPCS becomes a platform of proof if any questions should arise about corporate conduct, policies and procedures.

THE CASE FOR COMPETENCIES

When measured against Broadbank’s five competencies (described at the beginning of this article) for next generation of HR professionals, an EPCS is exactly the kind of forward-thinking innovation that can increase HR’s stock within the organization.

Strategic Contribution

Whereas HR has long bemoaned its ability to get a place at the strategic roundtable, being the administrator of an EPCS can open the door. Compliance is not simply an employee-related function. An EPCS creates a process that forces the entire organization to take responsibility for compliance, giving the HR manager the opportunity to add enterprise-wide structure and integrated strategy to the corporation. HR managers will also be able to provide CEOs and CFOs with quantitative data that will not only demonstrate the success of compliance efforts, but will also enable them to obtain better insurance packages at reasonable rates, thereby improving bottom-line profits and productivity from without as well as within the organization.

Personal Credibility

What better way for HR to prove its credibility to peers than to come to the table with a cost-saving innovation that positions the corporation as a high performer in its industry? The resulting benefits an EPCS brings to the enterprise — from reduced lawsuit risk and stabilized insurance premiums to accountability, transparency and overall workforce improvements — create a win-win scenario for both the corporation and the individual HR manager. Because an EPCS is an emerging technology, the HR professional who embraces it can become an expert and a leading source of knowledge and information about the EPCS within the HR community.

HR Delivery

The EPCS process empowers HR managers to diagnose, educate about and monitor workforce compliance. Such a system allows HR to encourage individual participation in

compliance achievement while documenting, benchmarking, indexing, predicting, and upgrading practices and processes that effect every aspect of the HR function.

Where compliance has previously meant getting an employee to sign a document, an EPCS breathes life into HR delivery. An EPCS brings compliance out of the HR department and into the company at large, where stakeholders in various departments can take ownership of their employees' understanding of important policies and procedures. To that end, an EPCS orients, trains, documents and reports employees' understanding and recognition of key policies, thereby capturing all the relevant data management needs to diagnose and confirm compliance throughout the company.

Business Knowledge

Besides contributing to strategic planning, savvy HR managers look to further their cause by demonstrating a keen knowledge of business objectives and tactics to increase profits and reduce risks. An EPCS also helps on this front by allowing the HR manager to show the corporation how to set up a baseline of compliance that monitors and minimizes the risk of embarrassing front-page lawsuits. In addition, HR managers can show cost reductions — and substantiate return on investment — by streamlining manual costs associated with compliance programs.

HR Technology Knowledge

Discussion is ongoing in the industry about the emergence and merits of practicing E-HR. It has been estimated that more than 91 percent of North American midsize and large corporations have some kind of electronic HR system.⁸ Clearly, adopting electronic and Web-based technologies improves efficiency. By becoming knowledgeable about EPCS,

HR managers gain the understanding they need to communicate to management and peers how this comprehensive technology platform can add cohesive infrastructure to the organization. Although the HR manager needs to stay abreast of the ways to integrate Web-based tools into the business model, changing legacy systems and procedures can cause a great deal of stress for staff entrenched in the process. That's why more companies are considering the benefits of outsourcing.

Outsourcing is becoming a common tool for accelerating the development of sound technology infrastructure. An EPCS, delivered through an application service provider (ASP), minimizes impact on the organization's information technology (IT) department as it takes advantage of objective industry experts. The outsourced ASP model also allows development of a program customized to meet pragmatic corporate needs; as needs change, the program can be updated and instantly delivered to every desktop in the organization. In addition, the responsibility for the ongoing support of the EPCS is transferred to a reputable provider equipped and staffed to maintain the application around-the-clock, while HR and IT managers can focus their efforts on other tasks.

SYSTEM IMPROVEMENTS FOR THE LONG TERM

To sustain a healthy business, HR managers are charged with helping their organizations avoid risk exposure, reduce the frequency and severity of legal claims and associated costs, and reduce insurance costs. HR managers need a common sense, comprehensive system that allows them to benchmark the current exposure climate, identify trends and develop corresponding plans that contribute to overall organizational effectiveness. An EPCS is the most effective method of

accomplishing these goals. HR managers who use this system will gain the potential to reduce insurance costs, increase worker morale and productivity, and apply consistent corporate governance and regulatory compliance to help reinvigorate shareholder confidence.

HR managers are no longer content to wait for problems to emerge before dealing with them. They know that reactive practices will bring continuous frustration. An EPCS allows HR to predict, pinpoint issues and be proactive. In the end, by introducing an EPCS, HR managers get the satisfaction of knowing they have put their core competencies to use in the development of sustainable corporate-wide system improvements.

Footnotes:

- (1) Cauldron, Shari. "HR is Dead. Long Live HR," *Workforce*, January 2003.
- (2) Ibid.
- (3) SHRM/Jackson Lewis 1997 Employment Litigation Survey. Shedding light on litigation trends. Available from www.jacksonlewis.com
- (4) U.S. Department of Justice Statistics.
- (5) Barrier, M., & Warner, D. (1998, February 1). Lawsuits gone wild. *Nation Business*, 86, p. 12.
- (6) EPLI: Understanding the exposure and preventing claims. (2001). Available from www.lawthatworks.com.
- (7) Jury Verdict Research Reports (2001).
- (8) Keebler, T.J., & Rhodes, D.W. (2002, Summer). E-HR: Becoming the "path of least resistance." *Employment Relations Today*, 29(2), p. 57.

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