

ADP TOTALSOURCE®

The Bottom Line

A Publication Dedicated to Employers' Current HR Issues & Solutions Brought to You by ADP TotalSource Volume 10

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HR Business Partners

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OSHA HAS BEEN BUSY. ARE YOU PAYING ATTENTION?

OSHA (Occupational Safety and Health Administration) is using every tool at its disposal to ensure that employers are in compliance with workplace safety standards and rules. It is pushing forward with new rules, enforcement initiatives, interpretive letters, and media initiatives at an unprecedented pace. Employers must keep abreast of this activity, increasing their vigilance and addressing safety and health issues relevant to their worksites.



OSHA FORM 300A

Employers covered by OSHA's recordkeeping rule must prepare and post OSHA Form 300A, "Summary of Work-Related Injuries and Illnesses," by February 1 and through April 30. The form must be posted at each establishment covered, in a conspicuous place among other notices to employees.

Before posting the form, a company executive must complete it and certify that he has examined the OSHA 300 Log and believes the annual summary to be correct to the best of his knowledge.

- A company executive can be one of the following:
- An owner of the company (only if it is a sole proprietorship or partnership)
 - An officer of the corporation
 - The highest-ranking company official working at the establishment
 - The immediate supervisor of the highest-ranking company official working at the establishment

OSHA can cite an employer who fails to post Form 300A as required.

TOP 10 MOST FREQUENTLY CITED STANDARDS



OSHA published its annual top 10 most frequently cited standards for fiscal year 2011 (October 1, 2010 through September 30, 2011). It publishes this list so that employers "can take steps to find and fix recognized hazards addressed in these and other standards before OSHA shows up." The list can be a critical tool, pointing out dangers often encountered in the workplace and the standards that OSHA compliance officers target the most. They are:

1. Scaffolding
2. Fall protection
3. Hazard communication
4. Respiratory protection
5. Lockout/Tagout
6. Electrical, wiring methods
7. Powered industrial trucks
8. Ladders
9. Electrical, general requirements
10. Machine guarding



PROPOSED CHANGES: NEW INDUSTRIES KEEPING LOGS, MORE STRINGENT REPORTING

OSHA has proposed changing the industries that would be generally exempt from maintaining regular workplace injury and illness records. Exempt employers would not be required to maintain OSHA 300 logs, complete OSHA 301 incident report forms or complete the OSHA 300A annual summary forms.

The proposed rule also would require employers to report workplace amputations to the agency within 24 hours and all in-patient hospitalizations within eight hours. The current recordkeeping rule (Part 1904) requires employers to report in-patient hospitalizations of three or more employees to OSHA within eight hours. Any workplace fatality would continue to be reportable.



Partially Exempt Industries

Certain employers in relatively low-hazard industries are excluded from OSHA's basic recordkeeping requirements. The current exemption list is industry-specific and based on the outdated 1987 Standard Industrial Classification (SIC) coding system. The proposed rule would recategorize the exempt industries according to the North American Industrial Classification System (NAICS), which is used by federal agencies for statistical research purposes. It would also remove some industries from the list based on new injury and illness data compiled by the Bureau of Labor Statistics.

The proposed change is significant. Some employers who have been regularly exempt from maintaining OSHA 300 logs would be required to keep them. Recordkeepers would need to be trained to identify work-related injuries and illnesses and properly record them. Conversely, some employers that have been required to keep records would now be exempt from doing so.

Employers should check the following lists to determine where they fit within OSHA's proposed rule:

Industries That Include Establishments to be Newly Required to Keep Records

3118 Bakeries and Tortilla Manufacturing	5617 Services to Buildings and Dwellings
4411 Automobile Dealers	5619 Other Support Services
4413 Automotive Parts, Accessories and Tire Stores	6219 Other Ambulatory Healthcare Services
4441 Building Material and Supplies Dealers	6241 Individual and Family Services
4452 Specialty Food Stores	6242 Community Food and Housing, and Emergency and Other Relief Services
4453 Beer, Wine and Liquor Stores	7111 Performing Arts Companies
4539 Other Miscellaneous Store Retailers	7113 Promoters of Performing Arts, Sports and Similar Events
4543 Direct Selling Establishments	7121 Museums, Historical Sites and Similar Institutions
5313 Activities Related to Real Estate	7139 Other Amusement and Recreation Industries
5322 Consumer Goods Rental	7223 Special Food Services
5324 Commercial and Industrial Machinery and Equipment Rental and Leasing	8129 Other Personal Services
5419 Other Professional, Scientific and Technical Services	
5612 Facilities Support Services	

Industries That Include Establishments to be Newly Exempt from Keeping Records

4412 Other Motor Vehicle Dealers	5239 Other Financial Investment Activities
4431 Electronics and Appliance Stores	5241 Insurance Carriers
4461 Health and Personal Care Stores	5259 Other Investment Pools and Funds
4471 Gasoline Stations	5413 Architectural, Engineering and Related Services
4511 Sporting Goods, Hobby and Musical Instrument Stores	5416 Management, Scientific and Technical Consulting Services
4532 Office Supplies, Stationery and Gift Stores	5418 Advertising and Related Services
4812 Nonscheduled Air Transportation	5511 Management of Companies and Enterprises
4861 Pipeline Transportation of Crude Oil	5614 Business Support Services
4862 Pipeline Transportation of Natural Gas	5615 Travel Arrangement and Reservation Services
4869 Other Pipeline Transportation	5616 Investigation and Security Services
4879 Other Scenic and Sightseeing Transportation	6116 Other Schools and Instruction
4885 Freight Transportation Arrangement	7213 Rooming and Boarding Houses
5111 Newspaper, Periodical, Book and Directory Publishers	8112 Electronic and Precision Equipment Repair and Maintenance
5122 Sound Recording Industries	8114 Personal and Household Goods Repair and Maintenance
5151 Radio and Television Broadcasting	8122 Death Care Services
5172 Wireless Telecommunications Carriers (except Satellite)	8134 Civic and Social Organizations
5173 Telecommunications Resellers	8139 Business, Professional, Labor, Political and Similar Organizations
5179 Other Telecommunications	
5181 Internet Service Providers and Web Search Portals	
5191 Other Information Services	
5221 Depository Credit Intermediation	

Reporting In-Patient Hospitalizations and Amputations

Under OSHA's existing recordkeeping rule, employers must report to OSHA, within eight hours, all work-related fatalities and in-patient hospitalizations of three or more employees. OSHA's proposal would broaden this to include work-related amputations, to be reported within 24 hours of occurrence, and any work-related in-patient hospitalization of an employee, to be reported within eight hours.

With this proposal, OSHA is following the actions of many states that have adopted more stringent reporting requirements for amputations and in-patient hospitalizations.

Employers had until September 20, 2011, to file written comments on the proposal and were encouraged to participate in the rule-making process. A final rule is expected soon.

*Focus on
your business
objectives!*

THE ADP TOTALSOURCE® SOLUTION

It is difficult to keep up with all of the developments by federal agencies. ADP TotalSource® is well versed in regulatory requirements, provides timely updates to clients about new developments, and offers clear action plans that allow them to focus on their business objectives. ADP TotalSource delivers a comprehensive risk-management and safety program that includes workers' compensation coverage and OSHA compliance assistance and is designed to help clients avoid unnecessary downtime and protect their bottom line. For example, ADP TotalSource offers initial evaluation of workplace hazards associated with operations and effectiveness of safety controls, with formal recommendations as appropriate; periodic follow-up visits; safety training, including OSHA mandated training; OSHA compliance assistance; OSHA 300 log review and a customizable safety manual and safety program. ■



Human Resources

Ask the Experts: HR Business Partners

As you have just read in “OSHA Has Been Busy. Are You Paying Attention?” proactive workplace-safety initiatives and risk management are essential to your company’s financial health. ADP TotalSource® spoke with several of our Human Resources Business Partners—the HR professionals who work the front lines with employers every day—to gain answers and insight into some of the questions employers are asking.

What are the general OSHA standards that apply to many employers? OSHA has a general duty clause that requires an employer to create a workplace that is free from recognized hazards that cause, or are likely to cause, death or serious physical harm to employees. While OSHA does have specific standards for certain industries, the following are OSHA requirements that broadly apply to many general industry employers.

HAZARD COMMUNICATION STANDARD

This standard is designed to ensure that employers and employees know about hazardous chemicals and how to protect themselves. Employers with employees who may be exposed to hazardous chemicals in the workplace must prepare and implement a written Hazard Communication Program and training and comply with other requirements.

EMERGENCY ACTION PLAN STANDARD

OSHA recommends that all employers have an Emergency Action Plan; it’s mandatory when dictated by an OSHA standard. An Emergency Action Plan describes actions employees should take to ensure their safety in a fire or other emergency situation.

FIRE SAFETY

OSHA recommends that all employers have a Fire Prevention Plan. It’s mandatory when dictated by an OSHA standard.

EXIT ROUTES

All employers must comply with OSHA’s requirements for exit routes in the workplace.

WALKING/WORKING SURFACES

Floors, aisles, platforms, ladders, stairways and other walking/working surfaces are present, to some extent, in all general industry workplaces. Slips, trips and falls constitute the majority of general industry accidents. The OSHA standards for walking and working surfaces apply to all permanent places of employment, except where only domestic, mining or agricultural work is performed.

MEDICAL AND FIRST AID

OSHA requires employers to provide medical and first-aid personnel and supplies commensurate with the hazards of the workplace. The details of a workplace medical and first-aid program are dependent on the circumstances of each workplace and employer.

I have heard a lot about OSHA’s proposed “IIPP” rule. What is it, and has it gone into effect yet? OSHA has been saying for two years that it will implement its Injury and Illness Prevention Program (IIPP) rule. The rule could affect over 5 million business establishments across the country and potentially over 120 million employees. Over 40 million employees may need to be retrained. In the proposed rule, OSHA estimated that the annualized compliance costs will be almost \$100 million for employers. Annualized benefits were estimated to be approximately \$850 million.

Even so, businesses still have no idea what the IIPP rule will look like. Most safety and health-management systems have some form of the following elements, implemented to proactively address hazards in the workplace:

- Management leadership
- Employee participation
- Hazard identification and prioritization
- Hazard control
- Education and training
- Evaluation and continuous improvement

OSHA’s draft of the proposed rule will likely integrate some form of these elements. Of course, the real challenge for OSHA is turning these broad concepts into mandatory requirements that can be broadly applied to employers in all industries and of all sizes. OSHA must also attempt to craft a rule that does not disrupt existing employer programs that may be working. However OSHA deals with these issues, it is important for businesses to watch its rule-making closely and actively engage OSHA on what will work and what won’t with respect to a proposed IIPP rule.

OSHA announced in February 2012 that there will be an additional delay in starting the IIPP process and gave no indication of when the process will begin, so businesses should stay tuned and monitor OSHA’s Web site for developments.

Does OSHA ever provide alerts to businesses to notify them of hazards in their particular industries? Yes, and in late 2011, OSHA expanded its practice of publicizing “Industry/Hazard Alerts” on its Web site. These alerts are designed to notify employers in certain industries of hazards that are of particular concern to the agency. In part, OSHA is using this technique to ensure industry recognition and knowledge of hazards, which OSHA may attempt to utilize in the context of enforcement proceedings. Employers in the industries targeted must take note of these alerts and ensure that they are fully compliant with OSHA standards.

The following Industry/Hazard Alerts are listed on OSHA’s Web site:

- Incorrectly refurbished circuit breakers
- Student worker killed while filming football practice from a scissor lift
- Dangers of engulfment and suffocation in grain bins
- Clearing piping systems with natural gas
- Hair-smoothing products that could release formaldehyde
- Work precautions for handling hazardous drugs

Are there any hard numbers that show how busy OSHA has been? Fewer inspections were conducted in fiscal year 2011 (October 1, 2010 to September 30, 2011) by OSHA compliance officers than in fiscal year 2010. Federal officers conducted 40,648 inspections, down from 40,993 in fiscal year 2010 but still above the 38,667 inspections in fiscal year 2008 (the last full year of the Bush administration). Construction inspections continued to account for more than half—56 percent—of OSHA’s visits in 2011. For 2010, the figure was 60 percent. The average proposed federal penalty for a serious violation in 2011 was \$2,132, up 102 percent from 2010’s average of \$1,053. Under the Bush administration in 2008, the average was \$998. The increase resulted from OSHA’s instituting a new penalty structure on October 1, 2010. The higher fines also meant there were more “significant” cases—investigations producing proposed fines totaling at least \$100,000. In 2011, there were 215 significant cases, up 31 percent from 164 in 2010. ■

Anatomy of an Employment Lawsuit – How Could a Jury Do That?



Employment lawsuits are skyrocketing at an alarming rate. Plaintiffs' attorneys and government agencies are getting more and more aggressive. Reductions in force and other cost-cutting measures are fueling the fire. Jury Awards are getting larger and larger.

An Illinois jury recently awarded \$95 million to one hourly employee who worked at a rent-to-own company. The plaintiff claimed the store manager had made verbal sexually offensive comments to her, inappropriately touched her and eventually sexually assaulted her. The supervisor adamantly denied doing so.

A Georgia jury recently awarded \$386,000 to a plaintiff who was terminated as part of a 28-person reduction in force when she was eight months pregnant. It was undisputed that the company's business had decreased significantly and no one was hired to replace her.

A California jury recently awarded more than \$2 million to an hourly employee after determining she was sexually harassed by her supervisor and retaliated against when she reported the abuse. That supervisor also denied doing so.

A New York jury awarded \$3.4 million in compensatory damages and \$250 million in punitive damages in a gender-discrimination class action – one of the largest gender-discrimination verdicts ever. For 10 years before the verdict, the company had been named one of the top places to work by *Working Mother* magazine. Clearly, the company had invested a great deal of time and effort in to do the right things for its female employees.





How Could a Jury Do That?

The plaintiff does not have a shred of evidence that I've done anything wrong. It's my word against his, so how can he possibly have a case? Plus, this is an at-will state. I can terminate him for any reason." That is what many small-business owners will say—and mean. The reality is that it does not matter, at least not as much as you might think.

For starters, discrimination and harassment are exceptions to the at-will doctrine created by Congress and many states. Consequently, the at-will defense is rarely an effective defense.

Equally important, a plaintiff does not need "smoking gun" evidence that an employer acted unlawfully. Courts recognize that workplace discrimination comes in many different forms. To be sure, discriminatory behaviors and actions can be blatant. For example, a manager might say, "Fire Don, he's too old." Or, an email might read, "Mary's medical problems are too troublesome, terminate her."

But those cases are rare. Courts understand that discrimination is normally much more subtle and difficult to prove. As a result, courts allow plaintiffs to use circumstantial evidence to prove their case. Depending on the type of case, examples of circumstantial evidence include the timing of a termination (was it close to a recent medical leave?), stray remarks that may seem innocent on their face ("we need a more vibrant and energized workforce"), evidence of how others have been treated in similar circumstances, what company policies say or do not say, whether the plaintiff was qualified for the position, whether the plaintiff was replaced by someone outside of the protected category, and whether the plaintiff had received good performance reviews.

A jury is permitted to rule in favor of a plaintiff based entirely on inferences they draw from such circumstantial evidence. Thus, if a jury concludes that an employer's story does not line up with the facts or does not justify the action taken, they are free to rule in favor of the plaintiff and conclude the real reason for the employer's action was unlawful discrimination or harassment.

Last, but certainly not least, a plaintiff's burden of proof in court is relatively low. A plaintiff need not prove beyond a reasonable doubt that an employer unlawfully discriminated against or harassed her. Rather, a plaintiff need only prove that an employer more likely than not discriminated against her. In hard numbers, this means that a plaintiff who proves her case by a mere 50.1 percent can win. Do you want a lawsuit against your company to be decided by the same odds as a coin toss?

Ultimately, when employers understand a plaintiff's 50.1 percent burden of proof and a jury's ability to rely exclusively on inferences drawn from circumstantial evidence, the verdicts discussed above become less surprising.

What Can You Do?

Though employers are not likely to change the judicial system, they can focus on what they do control:

- Employers must continue to monitor, train and manage their workforce in an ongoing effort to prevent discrimination and harassment.
- Employers should consistently administer company policies and procedures, especially in disciplinary actions and terminations.
- Employers should review their compensation and evaluation systems to make sure there is not a disparate impact on women or minorities.
- Employers should review other policies and practices, such as leave policies, to determine whether they might adversely impact women, minorities or employees with disabilities.
- As reflected by several of the verdicts discussed above, sexual harassment claims are alive and well. Employers must have applicable policies in place and, equally important, promptly and effectively investigate complaints of harassment when they are received. Simply conducting harassment training and having good written policies is not enough.
- Employers should consider effective use of severance agreements at the time of termination.

ADP TotalSource® clients can rely on the expertise of their designated human-resources professional to navigate many complex areas of the law, including training, drafting policies and investigating complaints of harassment or discrimination. ■

Age of the American Workforce Since 2007: | 55+ growing by 12%
25-54 dropped by 6.5%

HAS THE RECESSION WIDENED THE GENERATION GAP?

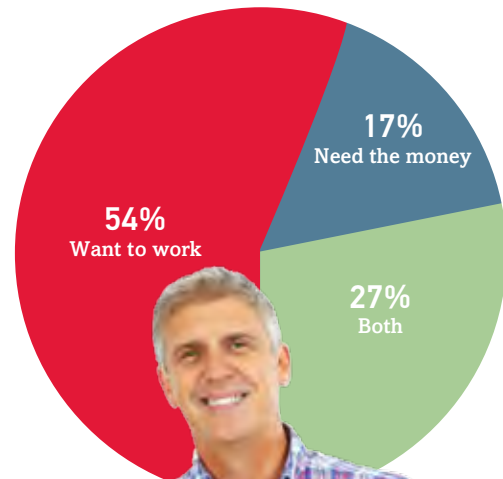
The number of people over the age of 55 in the workforce has grown by 12 percent since 2007, while that of workers aged 25 to 54 has dropped by 6.5 percent. Before the recession, many employers worried about the possible “brain drain,” as a large number of baby boomers were expected to retire over the next few years. Just as companies were coming to grips with this challenge, the recession took hold. Older employees put the brakes on their retirement plans, and companies shelved plans to hire, train, develop and promote younger talent. Instead, companies downsized staff, and many younger, less experienced employees were suddenly unemployed.

The result? A workforce that consists of older employees. But this may be a good thing for small businesses, at least in the short-term. Here are some of the advantages mature employees often bring to work:

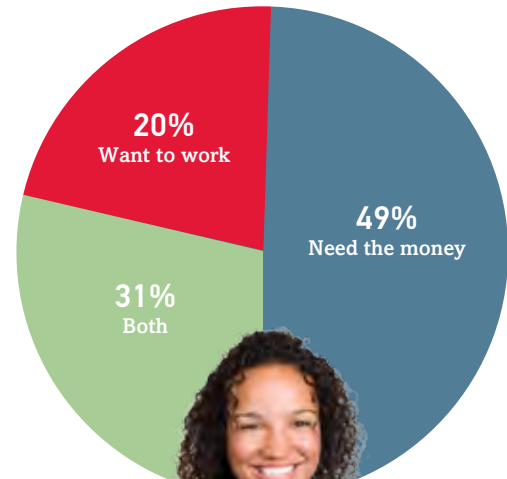
- A strong work ethic
- Experience-driven problem-solving and troubleshooting skills
- Ability to work autonomously and proactively
- Intellectual maturity and an accumulation of knowledge to do a good job
- Knowledge of how to get along with other people and build relationships that foster cooperation
- An interest in mentoring co-workers
- Ability to think on their feet
- Ability to draw on past experiences to make critical decisions and use solid judgment based on those experiences



WHY DO YOU WORK?



65 and older



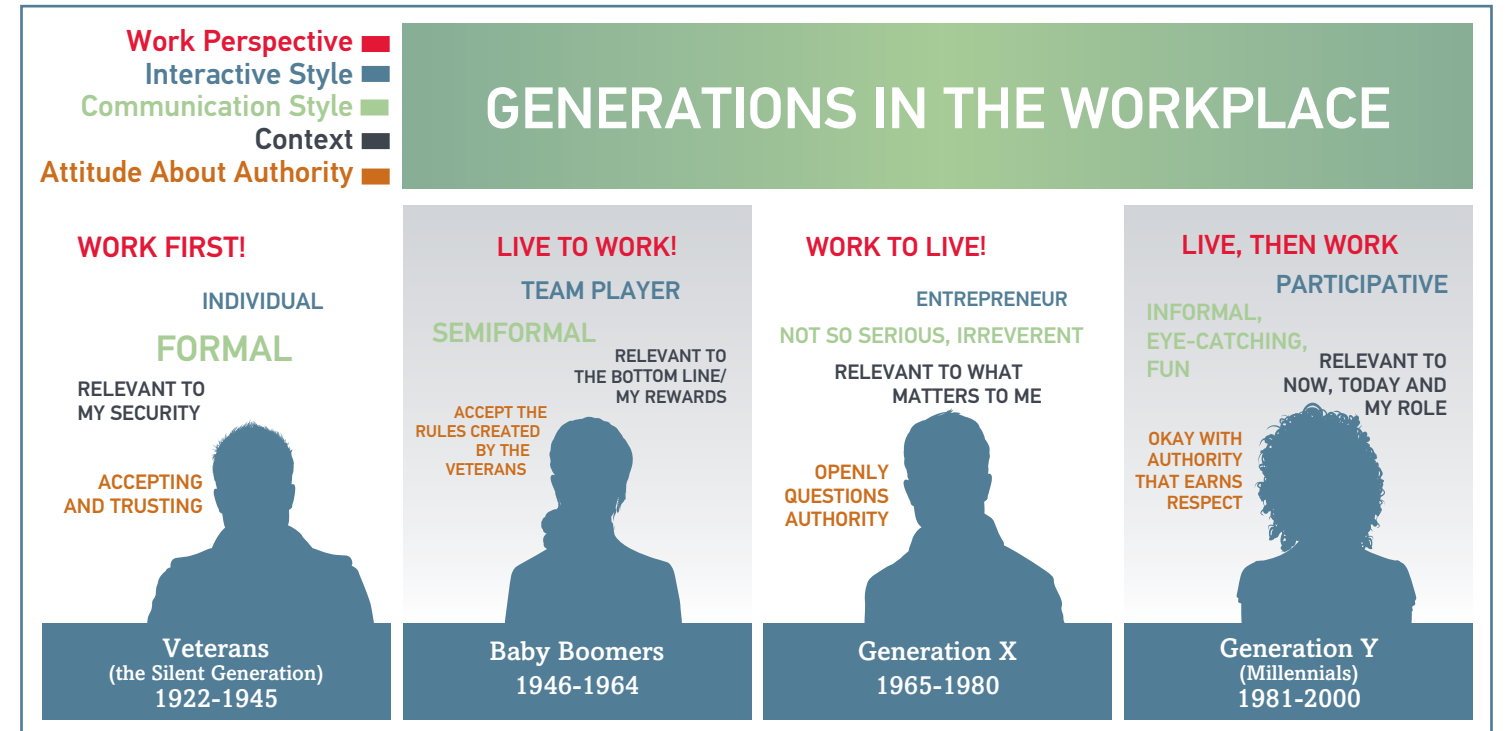
Ages 16-64

A 2009 Pew Research study reports that 54 percent of employees working past the age of 65 say the main reason they work is that they want to—versus 20 percent of employees between ages 16–64.

Note: Asked of 1,140 respondents employed full-time or part-time. “Don’t know/Reused” responses not included. Pew Research Center, 2009

Younger Manager, Older Employees: Making It Work

It’s not uncommon for older employees to change careers, reinvent themselves and start over in fields where they’re the “newbies.” An October 2011 survey by office-equipment maker Pitney Bowes found that about 20 percent of mid-level corporate employees now report to a boss who is younger than they are. For smaller businesses where there are fewer layers in the workforce, this is often the case. Since generational diversity can be as great a differentiator as cultural and ethnic diversity, understanding the differences is essential to bridging the generation gap and managing the modern workforce.



Source: Neil Howe and William Strauss, *Generations: The History of America's Future, 1584 to 2069*, William Morrow and Company, Inc., 1991

So What Happens Next?

New Approaches to Recruiting and Development

Companies with a large percentage of older workers may be enjoying the fruits of their problem-solving skills and expertise today. But when veterans and boomers retire, will the next generation have those same competencies? How will you hire and develop to make sure you continue to operate at the same high level as you do now?

Hans-Paul Burkner, CEO of Boston Consulting Group, commented at the World Economic Forum in Davos in January 2011 that organizations need to look at their current employment picture and map out where the chasms are going to open up in a few years. He worries that skills will be lost when workers leave and that this knowledge won't be replaced. In his view, “the developed world will move away from just getting people employed to making sure the right people are employed the right way.”

The good news is that in 2011, spending on employee development increased by an average of 9.5 percent, according to Bersin & Associates, an HR research and consulting firm. “U.S. companies are now reinvesting in training to address a major skills gap, which we identified in the market more than a year ago,” says Josh Bersin, CEO and president of Bersin & Associates. With more emphasis on training and development, small businesses can help prevent a loss in valuable skills as older workers leave the workforce.

Are Older Workers Less Healthy and More Expensive?

One of the biggest concerns about older workers is their effect on healthcare costs. But an aging workforce does not always mean higher healthcare costs.

Prevention and Disease Management. Employers who offer or provide access to resources for wellness and disease management generally have lower rates of diabetes and heart disease among their older workers than comparable organizations without wellness programs.

Intervene Before Disability. Statistically, the incidence of disability increases with age, so many employers are transitioning older employees to jobs that help mitigate this risk or are making adaptations to the workplace for them. And if an older employee does incur a disability, identifying it and intervening earlier helps the worker recover faster and the employer to control disability costs.

Reduced Absences and Lower Healthcare Costs. While older workers may take longer to recover from an illness or injury, studies show that they take fewer sick days than their younger counterparts. And because older employees typically do not cover young dependents, older employees' health benefit costs can also be lower.



RECIPROCAL MENTORING PAVES THE WAY FOR INCREASED SKILL AND KNOWLEDGE SHARING

Formal and informal mentoring programs that encourage professional interaction and contributions from all employee groups can help close the knowledge gap. Good ideas come from different generations and as a result of different motives. Individuals learn from each other in partnerships where they are both the giver and receiver of wisdom and information.

Traditional mentoring pairs a more senior person with a relative newcomer. "Reciprocal mentoring" is a two-way conversation where both the junior and senior colleague impart valuable knowledge. For example, as senior employees provide business knowledge and expertise to their junior counterparts, younger employees help older employees learn new technologies quickly and with fewer missteps. Reciprocal mentoring can help to:

- Engage workers across all generations
- Supplement formal training and development programs
- Show older employees that their expertise is valued
- Increase the adoption and acceptance of new tools and technologies
- Build relationships between the generations

For small businesses, reciprocal mentoring offers a low-cost and effective means of developing staff members at all stages of their careers. It can be a structured program or it can take place organically as employees perform their day-to-day tasks.

Source: Beverly L. Kaye, Beverly Bernstein Olevin and Mary Ammerman, "The New Corporate Ladder is Round: A New Mentoring Model to Fit the Changing Shape of Business," *Career Planning and Adult Development Journal*, Vol. 17, No. 1, Spring 2011.

A Graying Workforce or a Silver Lining?

The graying of the workforce, whether due to an aging population in general or a downturn in the economy, can be both a challenge and an opportunity for the small-business owner. Older employees bring a lot of advantages to your business, but as they retire, an unbalanced workforce could put you in a precarious position. However, small businesses are typically more flexible when it comes to creative workforce planning and development. The key is to take advantage of what you have today and plan for what you need tomorrow.

*ADP TotalSource University makes it easy for employers to provide learning activities through the **iLearn@ADP**® online training system. Programs are available for all staff levels from leadership and management to the basics for entry-level employees. Similarly, ADP TotalSource's Recruitment Solutions Group has the expertise to help small businesses recruit, screen and hire top talent in your industry.*

With all a small-business leader has to worry about, ADP TotalSource® can make important hiring, training and development activities one less concern. ■



ARE EMPLOYEE BENEFITS A SMALL-BUSINESS OWNER'S SECRET WEAPON?

As a small-business owner, you face these human-resource challenges daily:

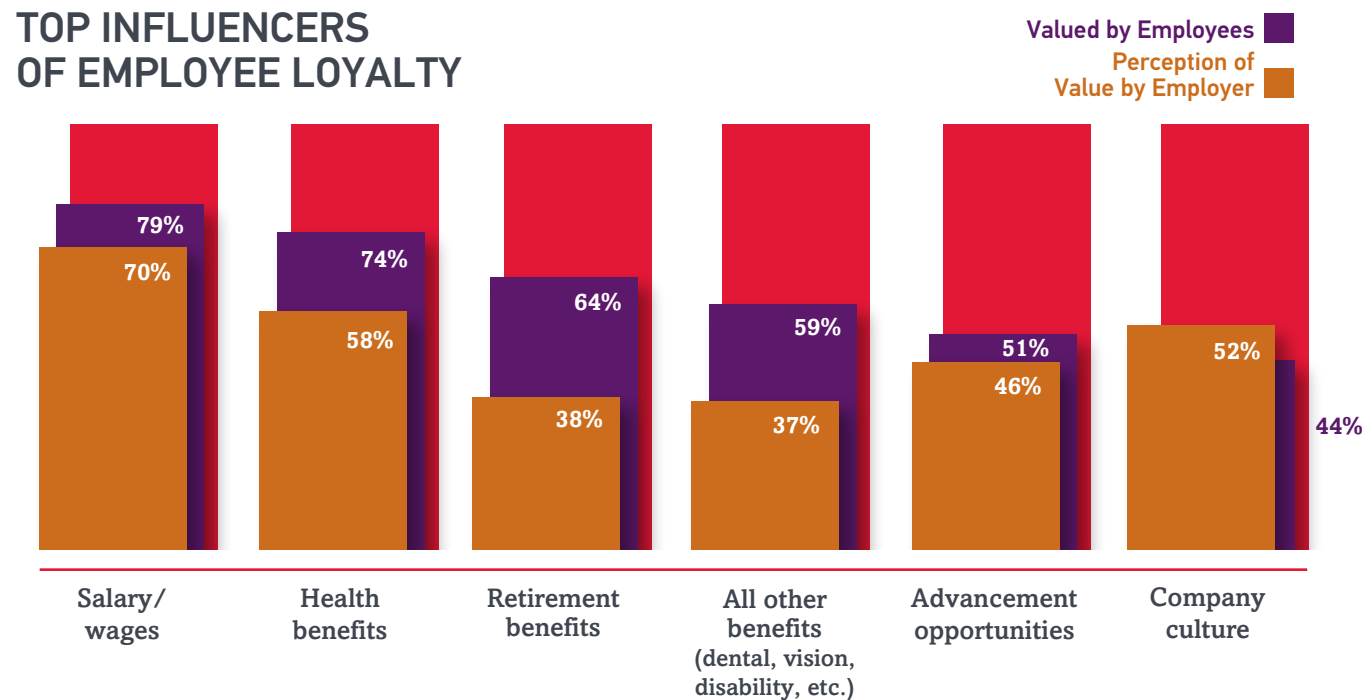
1. Paying for expensive employee benefits
2. Recruiting and retaining key talent
3. Balancing 1 and 2 above with limited resources

Approaching employee benefits strategically can help you turn these challenges into opportunities. How? Recognizing the value of benefits to your employees, and then maximizing their understanding of them, will allow you to get the most bang for your benefits buck.

Benefits Influence Worker Loyalty

Benefits are a major driver of employee loyalty and retention—valued commodities for smaller businesses where each employee represents a larger percentage of your workforce. In fact, the 9th Annual MetLife Study of Employee Benefit Trends found that only salary and wages ranked higher than benefits as the top influencer of company loyalty. What’s alarming, however, is that in the same survey, employers ranked the top influencers much differently than their workers.

TOP INFLUENCERS OF EMPLOYEE LOYALTY



Employee Loyalty Is No Longer a Sure Thing

In eight of the past 10 months, more workers have quit than have been laid off, according to the Bureau of Labor Statistics. And the MetLife study found that employees working for smaller employers (less than 500 employees) acted similarly. More than one-third (34 percent) surveyed by MetLife said they would like to work for a different employer.

What is a small-business employer to do? The answer may be in the benefits you offer. Approximately two-thirds (60 percent) of surveyed employees say that benefits are important to why they remain with their company. And 71 percent of employees who are highly satisfied with their benefits feel a strong sense of loyalty to their employer.



THE HIGH COST OF LOYALTY

You probably know how benefit costs affect your budget. But have you considered the cost of turnover? Experts estimate the cost of replacing an employee who resigns to be 100 percent to 200 percent of the person’s annual salary when you factor in lost productivity, overtime for others taking over their work, and recruitment and training of a replacement, not to mention the difficult-to-quantify costs, such as relationships with customers and suppliers.

So when you connect the dots, the appropriate investment in benefits can help increase loyalty, reduce turnover costs and decrease stress to the organization.

THE GOOD NEWS: SMALLER BUSINESSES HAVE AN ADVANTAGE

Small businesses are in a good position to use benefits programs to engage their workers and improve productivity and job satisfaction. This is because small-business owners often have more personal relationships with their employees and can more easily tailor benefits to suit them. With a little creativity and planning, small-business owners can enhance their benefits packages without taking a big hit to the bottom line.

Better Communications

The single most effective action a small business can take to improve its employees' impressions of their benefits is to provide meaningful communications about them. In fact, a fall 2011 Aflac WorkForces Report found that 43 percent of workers agree they would be less likely to leave their jobs if they were well-informed about their benefits.

Most organizations expend a great deal of energy and effort creating communications around enrollment. But a strategy that emphasizes ongoing communications may yield better results. According to the Aflac report, "Expecting employees to comprehend and retain large amounts of benefits information all at once—as often is the case during new employee orientations and the open enrollment period—is unrealistic. Instead, employers should use an incremental approach that allows for regular sharing of benefits information."

Voluntary Benefits

The MetLife study shows that 61 percent of small-business workers say they value voluntary benefits as a way to obtain benefits that meet their personal needs. They're even willing to pay some or all of the cost. Employees recognize the advantages of obtaining these benefits through work: lower group rates, convenient payroll deduction and easier enrollment.

There are numerous voluntary benefits available to small businesses. These are some of the most popular:

- **Disability**
- **Life insurance**
- **Accidental death and dismemberment**
- **Critical-illness insurance**
- **Auto and homeowners' insurance**
- **Identity-theft protection**

These benefits can offer value to small businesses at a low cost, but administering them can be challenging. ADP TotalSource® voluntary benefits programs enable small businesses to offer worksite employees an array of benefits without the administrative burdens.

Source: <http://hiring.monster.com/hr/hr-best-practices/workforce-management/employee-retention-strategies/employee-turnover-costs.aspx>



Retirement Security

Being able to afford to retire is a concern of many workers. Stock market volatility, housing market ills and other financial challenges have increased this concern. Implementing a retirement-savings plan for your small business helps you accomplish two important goals:

- **It demonstrates your commitment to employees. It sends a message to current and prospective employees that you're concerned about their standard of living in retirement, which helps attract and retain staff.**
- **It can provide you with financial advantages. Small-business owners may save on taxes and secure their own retirement along with those of their employees.**

Having these benefits can make the difference between an engaged workforce and one that is "retired on the job." The MetLife research found that 64 percent of employees age 55 and older who are behind in saving for retirement are more likely to say they keep working because they need the money. Those who are on track in their retirement planning are more likely to say they are working to stay meaningfully engaged (63 percent).

Workplace Flexibility

Small businesses that offer workplace flexibility are better able to attract and retain workers who are willing to engage in some give-and-take with their employers to make sure work gets done.

Forty-two percent of working adults say they would give up some percentage of their salary for more flexibility at work, according to an online survey of 1,071 working adults nationwide conducted on behalf of Mom Corps, a professional staffing firm. And there is some evidence that flexibility as a perk is gaining traction because it is a benefit that employers can still provide in a recessionary economy.

"Workplace flexibility is something that we have to do not only when times are good but when times are bad. Workplace flexibility will help our businesses and our families thrive," says Martha Coven of the White House Domestic Policy Council.

WHAT CAN BENEFITS DO FOR YOU?

Savvy business owners understand the importance of a valued benefits package as a tool to preserve and enhance employee loyalty. During these times of belt-tightening and expense control, small businesses are looking for ways to maximize the benefits they offer. With some creativity and ingenuity, they can take steps to stretch their dollars and keep themselves in position to offer competitive benefits that support their businesses and their workforce.

Don't have the bandwidth to devote to optimizing your benefits offering? A PEO like ADP TotalSource® allows you to take advantage of vetted, valuable benefits products, hands-off administration, relief from compliance concerns and much, much more. ■

To Fee or Not to Fee?

NEW 401(k) PLAN DISCLOSURE RULES

Participants in 401(k) retirement-savings plans have seen the numbers on their statements change over time as the added contributions and investments gained or lost value. Soon there will be a new set of numbers on account statements. Participants may not have been aware of them, but these numbers have a direct effect on account balances and retirement savings.

New Rules About Plan Fees

The U.S. Department of Labor (DOL) has created new legislation that will require 401(k) plan administrators/recordkeepers to disclose the fees they charge to participants by August 30, 2012. There are two major sources of these fees, which will be broken down and expressed as a percentage of assets on participants' statements:

- **Management fee.** The amount the administrator charges for managing the specific investments (usually mutual funds, but can also include annuities and other insurance products).
- **Recordkeeping fee.** The cost of administering the plan, including transferring money, providing education and customer service and keeping the plan compliant.

Participants may also pay a fee for certain transactions, such as loans, hardship withdrawals or actions relating to a divorce.

Not All Ignorance Is Bliss!

Most plan participants are not aware that they're absorbing the cost of these provider fees. According to an AARP survey report released in March 2011, 81 percent of plan participants feel that fees are an important consideration in investment decisions. However, 62 percent of the respondents said they don't know what they pay in fees and expenses. And about a third (32 percent) said they don't know how the fees can affect their retirement savings.

The AARP report also shows that when plan participants were asked whether they pay fees for their 401(k) plan:

- 71 percent reported that they did not pay any.
- 23 percent said they do pay fees.
- 6 percent weren't sure.

Source: 401(k) Participants' Awareness and Understanding of Fees, March 2011, http://assets.aarp.org/rgcenter/econ/401k_fees.pdf

WHAT DOES IT ALL MEAN?

Retirement-savings plans, such as 401(k) plans, seem to have their own language. Here are a few of the terms that frequently pop up in discussions about them:

- **Administrator/recordkeeper.** A firm or individual that:
 - Tracks contribution rates, investment selections and balance
 - Tracks the amount of employer matching contributions (if applicable)
 - Provides account statements
 - Maintains information about any outstanding 401(k) loan(s)

Recordkeeping services are commonly provided by accountants, payroll-services providers, brokerage firms and mutual-fund companies.

- **Trustee.** A plan's assets must be held in trust to ensure that they are used solely to benefit the participants and their beneficiaries. The trust must have at least one trustee to handle contributions, plan investments and distributions. By law, all 401(k) savings must be held in a trust account that is separate from the assets of the employer.
- **Investment manager.** The individual or firm that offers the investments available to participants. These typically are brokerage or mutual-fund firms.

Depending on the plan, the roles of the administrator/recordkeeper, trustee and investment manager may be filled by the same or different companies or individuals.



Fee Transparency on Participant Statements

The fees that plan participants pay aren't new—today, they're typically reflected in a participant's account balances after the charges have been taken out. The new DOL rules make the fees transparent to participants. In other words, the fees will be shown as a new line item on account statements, along with contributions and investment gains and losses.

An additional regulation, due to be implemented in June 2012, will require that plan administrators offer a summary document, or road map, of all fees.

What This Means in Dollars and Sense

Experts estimate that participants pay anywhere from 0.1 percent to 1.5 percent of their assets in fees each year. According to a November 2011 study conducted by Deloitte Consulting LLC for the Investment Company Institute, annual fees amount to an average of 0.83 percent of assets. So for every \$100,000 in a participant's account, the participant will pay, on average, about \$830 per year in fees. Over the course of 30 years, that adds up to almost \$25,000. Obviously, the more assets a participant has, the more he or she will pay in fees.

The legislation won't change the fees that participants pay – at least not at first. But the new rules are expected to put pressure on 401(k) administrators and fund managers to keep their fees and expenses as competitive as possible. As a result, plan participants may see reductions in fees and expenses in the future.

The bottom line is that in the near future, plan participants will be able to clearly see what they are paying in fees and make informed decisions about how to invest their retirement savings. Fees should not be the only factor that participants need to consider in their investment allocation, but being fully informed will certainly help them make better decisions.

Clients of ADP TotalSource® can rely on the expertise of our 401(k) plan advisers to select the funds that offer both competitive fees and sound investment choices appropriate for the risk and return needs of worksite employees. Additionally, as the plan sponsor of a 401(k) with more than \$1.4 billion in assets, ADP TotalSource is able to negotiate competitive rates for fees and expenses on behalf of plan participants.



ADP TOTALSOURCE® 401(k) PLAN

ADP TotalSource has partnered with MassMutual to offer clients a 401(k) plan that provides worksite employees with a flexible way to save for the future. In addition to enhancing a benefits package, this plan offers:

- **No direct administration fees.** The ADP TotalSource plan is offered at no additional cost to clients.
- **Easy administration.** ADP TotalSource performs all recordkeeping and IRS-required testing and filings on the client's behalf, and also negotiates administrative and money-management fees. Other services include investment-selection due diligence, participant education and communication.
- **Investment flexibility.** The ADP TotalSource plan offers a well-diversified portfolio of investment funds, including target-date funds and a self-directed brokerage account.
- **Access to experts.** Each client is assigned a highly trained 401(k) plan specialist to provide expert support and services.
- **Customization.** Multiple options and features are available so employers can customize the plan to fit their unique business needs.
- **Top-notch participant services.** Participants have access to their current account information, transaction capabilities and interactive planning tools online, as well as live customer service representatives. ■

Source: Inside the Structure of Defined Contribution/401(k) Plan Fees: A Study Assessing the Mechanics of the 'All-In' Fee, November 2011, http://www.ici.org/pdf/rpt_11_dc_401k_fee_study.pdf

VACATION POLICIES HOW TO MAKE THEM WORK

How can you make your vacation policy work best for your company?

For starters, take inventory. Many vacation policies have been built in pieces over the years. Companies should study the policies they already have in place and make sure they still meet the needs of their employees. In some cases, the way in which various time-off program segments are combined can make a significant impact on costs and employee productivity.



Identify the totality of time-off program costs and establish a formal tracking plan. Once companies have a comprehensive inventory of their vacation policies, they need to identify all the related costs and establish a formal plan for tracking and managing them.

Keep up with current trends in offering vacation benefits. A less generous vacation policy may make it difficult to hire new employees or keep current ones, while a more generous vacation policy can be a valuable recruiting tool.

Know the differences in state law. In some states, accrued but unused vacation cannot be forfeited; in others, it can. Employers must plan ahead and understand that state law will differ depending on where they operate.

If vacation is not forfeited, then employers might consider capping the carry-over of accrued vacation time. When employees reach a certain number of hours, an employer may stop them from accruing more until they take vacation, depleting their balance. This helps control vacation accrual and encourages employees to take their earned time off. However, this approach should be balanced against the employee-relations benefit of having a vacation policy with no cap, which rewards committed workers.

Lastly, understand your rights. Subject to state and federal law, employers generally have the right to force vacations when employees accumulate a specific amount of time off or when they want to achieve certain business needs. Also, employers generally have the right to deny vacation time. If four people in a department all want time off in the same week, it could create a business hardship, so employers may have the right to deny time off as appropriate.

Vacation time is an opportunity for workers to rest and return to work rejuvenated.

Time off can increase productivity, boost morale and instill an appreciation for the benefits of working for a company. Not surprisingly, vacation time has become a practically universal benefit. Almost all employers offer it, and it's usually paid. In fact, a Bureau of Labor Statistics survey of private industry shows that a large majority of employees are given paid vacations. Here is the breakdown:

- *77 percent of all workers*
- *91 percent of full-time workers*
- *37 percent of part-time workers*
- *87 percent of workers in management, professional and related occupations*
- *59 percent of workers in service occupations*
- *87 percent of unionized workers*
- *76 percent of nonunionized workers*
- *70 percent of workers in small establishments (less than 100 workers)*
- *85 percent of workers in larger establishments (100 or more workers)*

Q&A

WHAT FACTORS SHOULD BE CONSIDERED WHEN DESIGNING OR REDESIGNING A VACATION POLICY?

What follows is a categorized list of questions to answer that will assist in the design or redesign of a vacation policy:

ENTITLEMENT

- How is the amount of vacation each employee receives determined?
- Do part-time staff earn vacation?
- If so, is it earned under the same entitlement as full-time staff?
- Is there a difference in entitlement based on rank (e.g., between managers and nonmanagement staff)?
- Is there a relationship between seniority and amount of vacation received?

PAY CALCULATION

- If an employee routinely receives a special pay, like shift differential, will that also be paid during vacation?
- On what basis is vacation pay calculated for employees who do not work regularly scheduled hours?

SCHEDULING

- How are vacations scheduled?
- What if more employees than an employer can afford to have absent want vacation at the same time?
- Are there times during the calendar year that vacation must be taken or cannot be taken?
- Is there a waiting period before a new employee can take vacation?
- Can an employee split vacation and/or take it in daily or hourly increments?

ACCUMULATION

- Can vacation entitlement be carried over from year to year?
- If yes, is there a maximum amount of either the total accumulation or the amount that can be carried over from one year to the next?
- Can an employee take all of his or her earned vacation at one time, which could be three or four weeks, or is the employee limited to a certain amount of time?



Options for unused vacation time. Many employers maintain vacation programs under which an employee is entitled to a specified amount of paid time off each year based on his or her years of experience. If the vacation time is not taken by year-end, employers usually adopt one of three strategies, as permitted by state law: unused vacation is forfeited; the employer pays the employee the equivalent of the unused vacation; or some or all of the unused days are carried over to the next year.

Some employers are creative with their vacation policies. They may use a vacation buy-back program (as permitted by state law), which typically affords an employee the opportunity to cash out his or her unused vacation benefits.

This may incentivize employees to work rather than take unnecessary vacation. Others use vacation-donation programs, which lets workers donate their accrued vacation hours to fellow employees who have experienced a catastrophic illness or injury and who have exhausted all their accrued time, resulting in a prolonged, unpaid leave of absence. The program is a positive employee-relations tool that supports workers who want to help their colleagues.

Pay at time of separation. Accrued vacation pay may be given to a terminating employee. Some states require it, and some do not. Be sure to check your state's laws to know your rights.

Certainly, a lot of thought and preparation goes into creating an effective, rewarding company vacation policy. More than just a payroll processor, ADP TotalSource® provides clients with the latest human-resources advice on a wide variety of issues, including programs for employees' time off. ADP TotalSource can work with employers to achieve a state-compliant vacation policy and assist them with tracking time off. ■



STATE EMPLOYMENT LAW UPDATES

ADP TotalSource® offers clients relief from legal and regulatory burdens, including the legislation shown here. Timely communication, clear action plans and helpful resources allow ADP TotalSource clients to focus on their business objectives. The following updates reflect sample developments from December 2011 to March 2012.

Jurisdiction	Regulatory Development(s)	ADP TotalSource Action(s)
ALABAMA 	Effective April 1, 2012, all employers with employees in Alabama are required to register and participate in the U.S. Department of Homeland Security's Employment Eligibility Verification Program (E-Verify).	Alerted clients to the update; administers E-Verify as designated agent; provides guidance on E-Verify enrollment; provides secure online E-Verify dashboard to monitor ongoing verifications.
CALIFORNIA 	The State of California enacted a series of new employment laws that require significant changes in employer human-resource policies and employee handbooks. The changes include disability leave for pregnant employees not otherwise eligible for Family and Medical Leave Act benefits; restrictions on an employer's ability to obtain job candidates' credit reports; increased penalties for misclassifying employees as independent contractors; and a new requirement to provide nonexempt employees a written notice with details of their wage payments and related information.	Alerted clients to new requirements; updated standard employee-handbook policies and provided a model form as necessary to comply with new requirements.
GEORGIA, SOUTH CAROLINA, TENNESSEE 	Effective January 1, 2012, all employers with employees in these three states are required to register and participate in the U.S. Department of Homeland Security's Employment Eligibility Verification Program (E-Verify).	Alerted clients to the new requirement; provided online access to the new notice and applicable instructions.
NEW JERSEY 	In late 2011 the New Jersey Department of Labor and Workforce Development issued a new mandatory notice pertaining to records maintenance and reporting that employers must post and distribute to all employees and new hires.	Alerted clients to the new requirement; provided online access to the new notice and applicable instructions.
FEDERAL 	Following a recent ruling in federal district court, effective April 30, 2012, all employers covered by the National Labor Relations Board (NLRB) are required to post a notice that informs employees of their right to organize, provides contact information for the NLRB, and provides information regarding basic enforcement procedures.	Alerted clients to the change; provides online access to the updated poster; provides HR guidance and best practices to help clients stay in compliance with the law. ■

What ADP TotalSource® Clients Are Saying

Strengthening HR capabilities with help from ADP TotalSource

For manufacturers looking for a way out of the downturn, recovery depends on the availability of skilled workers who can get up to speed quickly with new technologies and production methods—and who have the ability to keep a tight lid on HR costs. **For help streamlining their HR functions and getting the upper hand on costs and compliance, MSA turned to ADP TotalSource.**

Central to MSA's partnership with ADP TotalSource is the relationship between COO/CFO Ed Derryberry and his team, and their ADP TotalSource Human Resources Business Partner. "I let it be known to everyone who reports to me that they are to seek TotalSource's counsel on any kind of sensitive employee situation," says Derryberry. "There are so many rules and regulations that MSA would be left exposed otherwise."

Among the specific compliance areas he cites are workplace safety and OSHA issues, where ADP TotalSource has "helped with internal inspections and audits, helping make sure we were doing what we needed to do. TotalSource also recently helped us rewrite our employee handbook to bring it in line with current requirements; the old one was very outdated. We also worked with them to develop and implement a drug-free workplace program and random drug testing."

MSA's competitiveness is directly linked to its ability to retain highly skilled employees. "A single window can take up to 40 to 50 labor hours to build, and it takes a long time before that to train an employee to reach the necessary skill level," Derryberry explains. "We simply cannot afford to invest that time again and again on retraining, so keeping turnover to a minimum is very important to us." The availability of a dedicated HR team and robust employee benefits are critical factors in enhancing employee retention and engagement, and since partnering with ADP TotalSource, MSA has taken full advantage of the possibilities.

MSA Aircraft, Inc.

Industry: Manufacturing

Type of Business: Designs, manufactures and supplies window-shade systems and associated composite components for use in private corporate/VIP aircraft, as well as in new applications in first-class commercial aircraft.

Location: San Antonio, Texas

Number of Employees: 55

ADP TotalSource Client: Since 2010

Why ADP TotalSource? "ADP TotalSource acts as an extension to our company. They are a good partner for us."
— Ed Derryberry, COO/CFO, MSA Aircraft

A big priority for Derryberry and his team was to get a handle on MSA's HR costs. "I had come from a company that used ADP TotalSource, so I was well aware of the advantages of having a much larger HR partner," he says. "For example, as a small business, we found we couldn't take the surprises that come with our insurance renewals. Budget forecasting was challenging, and the costs were a real concern, especially in a tough economy." By providing MSA with a team of experts in areas such as benefits, compliance and HR administration, ADP TotalSource enabled Derryberry and his team to stabilize costs to stay competitive.

"The ADP TotalSource team acts as an extension of our company in so many ways," says Derryberry. "The TotalSource team members have been a great resource for us, and I have high praise for their expert counsel and the way they handle our HR needs. I have gotten calls from several other PEOs, but I have no reason to shop around. ADP TotalSource works well for us." ■



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