

# Human Capital Risk Management

*Strategically-Focused, Professional Risk Management  
for HR Professionals and the Organizations They Lead*



**Gallagher**

Insurance | Risk Management | Consulting

HCRM - CACUBO - 02/23/2018

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Seminar Manual



Insurance | Risk Management | Consulting

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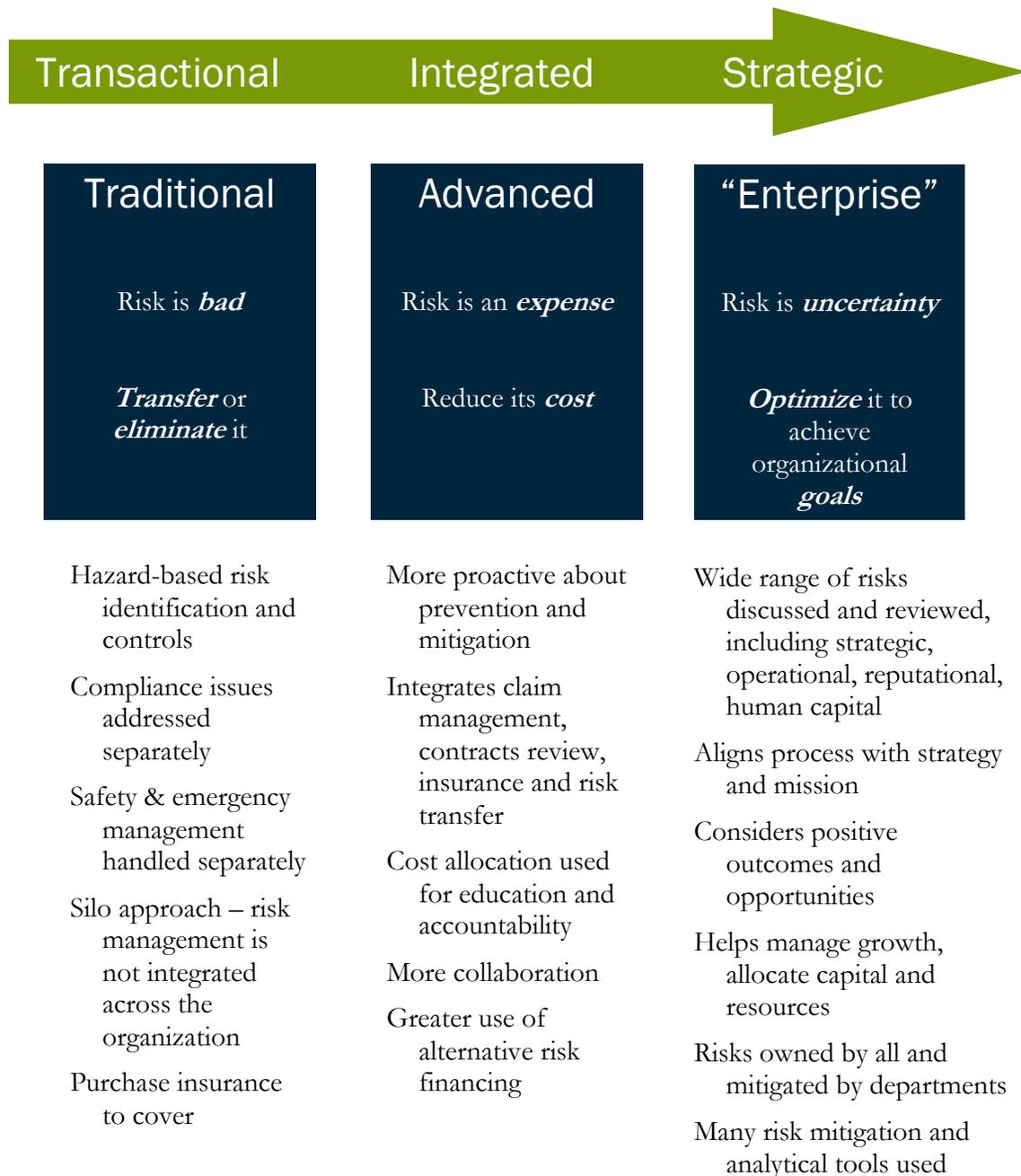
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# Risk Management!



One of the central responsibilities of organizational leaders is to manage and mitigate organizational risk. Human capital (talent) risk is quickly becoming recognized as one of the most significant, yet also one of the least effectively managed, organizational risks. *This presents an outstanding opportunity for you to demonstrate your leadership, and to influence other decision-makers in your organization.*

# Evolution of Risk Management



*How do you assess, prioritize and manage enterprise-wide talent risk?*

# Evolution of HR/Benefits Compliance Risk Management



# What is Human Capital Risk Management?

The identification and evaluation of actual and potential risk areas related to human capital/talent, as they pertain to the organization as a whole, followed by a process of either avoidance, elimination, transfer, tolerance, exploitation, or mitigation of each risk, or a response that is a combination or integration of these treatments.

Perhaps more simply put – *human capital risk is managing the ability of the workforce to meet the objectives of the organization.*

In the past, human resource professionals/managers have often taken a weak, reactive approach to human capital risk management. Some have even become “risk complacent,” perhaps either believing that they can forecast the future, or avoiding consideration of certain human capital risks and/or their future implications.

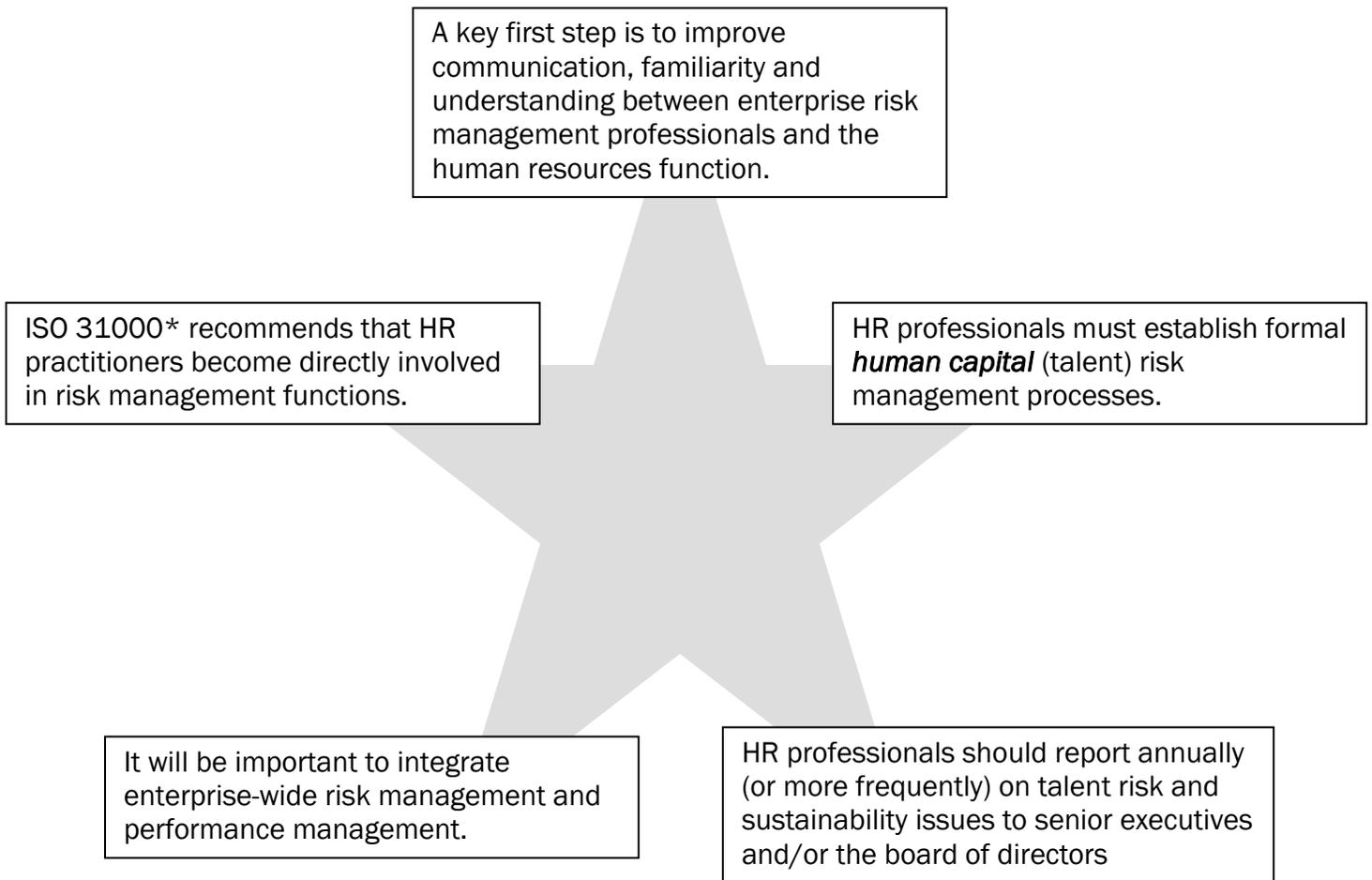
What is required is an integrated, proactive approach to human capital management and enterprise risk management.

# Four Key Transformations for HR Professionals

*Evolving from Tactical Specialists to Strategic Risk Management Partners*

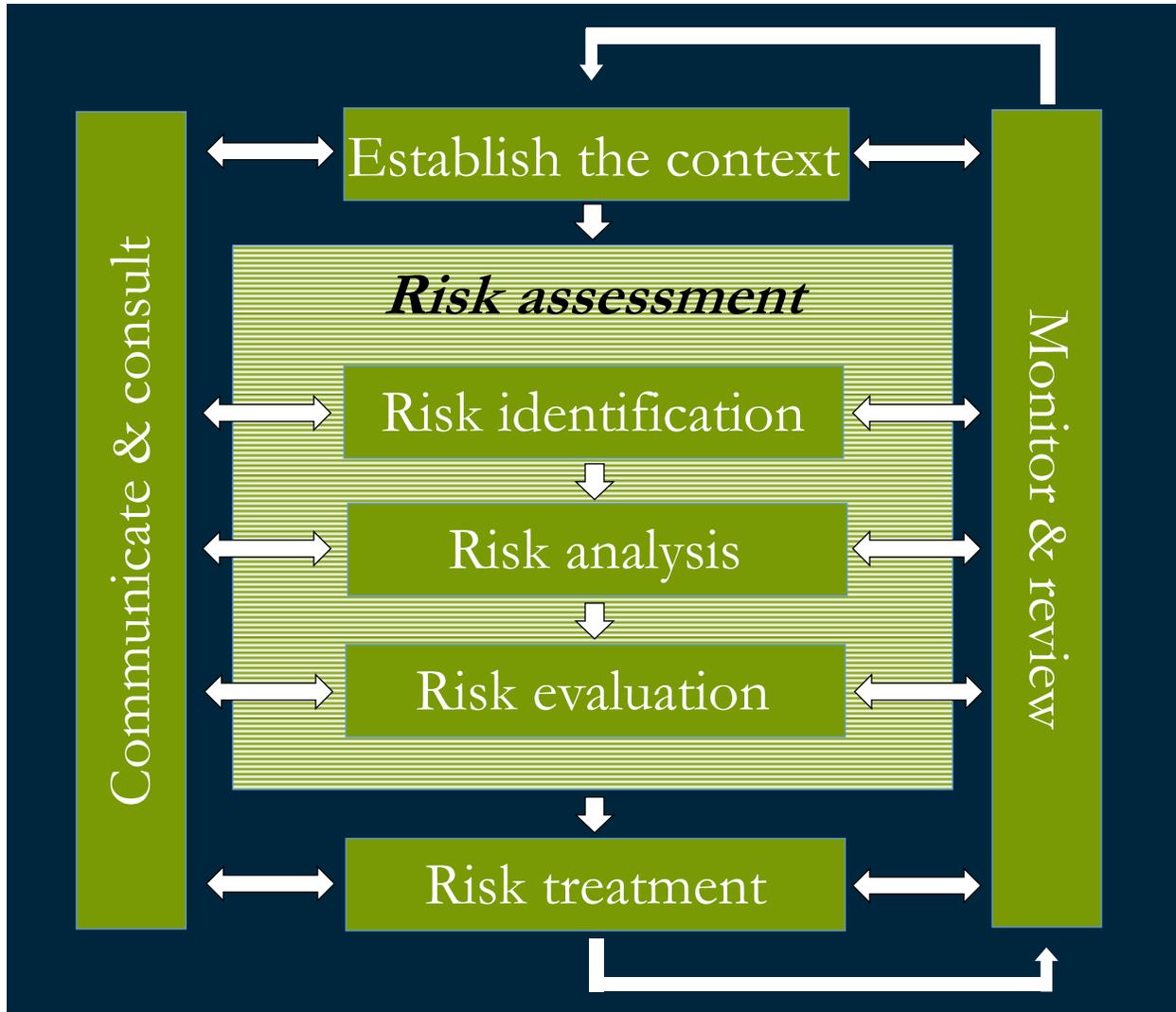


# Establishing the Context: Five Operational Considerations



\* Standards relating to risk management, codified by the International Organization for Standardization to provide principles and generic guidelines on risk management.

# Risk Management Process



# Risk Categories



Compliance



Financial



Operational



Strategic

## ***Strategic* Human Capital Risk Exposures**

Human capital risk exposures relating mostly to an organization's strategy and its execution include:

- Leadership and management succession
- Leadership capacity and implementation
- Culture
- Change management
- Ethics
- Key talent ("A" players in strategically-critical positions)
- Alignment between current and future (strategic) talent capabilities, and organizational objectives
- Organizational opportunity and growth
- Alignment between pay and performance

## ***Operational* Human Capital Risk Exposures**

Human capital risk exposures relating mostly to an organization's operations include:

- Talent and skill availability (avoiding/overcoming talent shortages)
- Acquisition, selection and retention of talent
- Employee motivation and job satisfaction
- Employee engagement (and passion?)
- Performance and productivity
- Management and minimization of employee absences (and presenteeism)
- Employee safety, and reduction of accidents and injuries
- Management skills
- Retention of organizational knowledge (despite retirement and attrition)
- Training and development
- Vendor management and sourcing

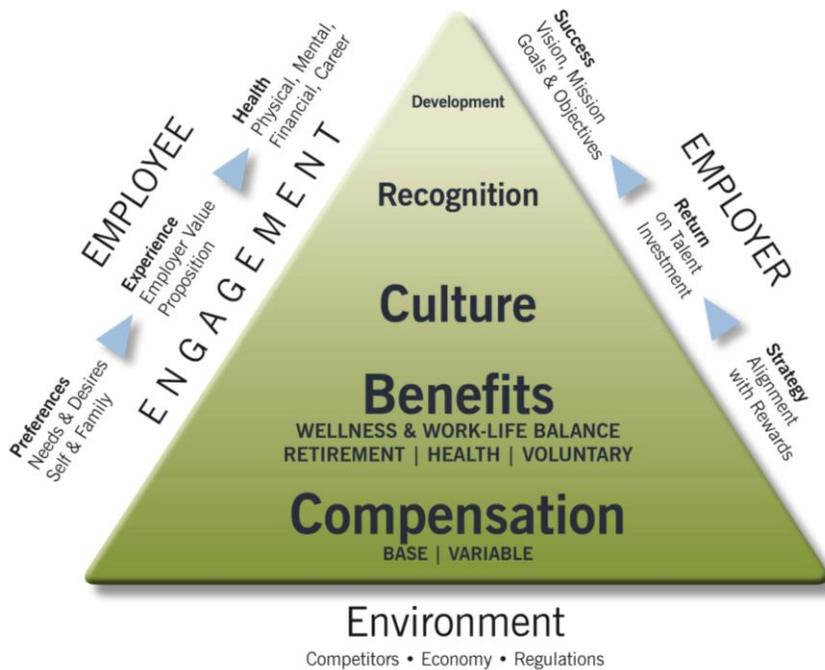
# Financial Human Capital Risk Exposures

Human capital risk exposures relating mostly to an organization's finances include:

- Talent investment (human capital investment management) – what rewards to offer, how much to allocate to various rewards components, and how much rewards personalization to offer
- Maximizing return on talent investment
- Effective incentive compensation

## Total Rewards

Attract • Retain • Develop • Engage  
Talent



0077047A

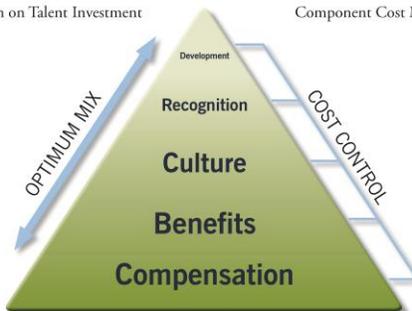


Total Rewards  
Asset Allocation

Overall Return on Talent Investment

Rewards Component  
Cost Control

Component Cost Minimization



# Compliance Talent Risk Exposures

Human capital (talent) risk exposures relating mostly to an organization's compliance include:

- Existing legislation and regulation
- Litigation
- Fraud
- Regulatory aspects of absence management
- Monitoring possible and likely changes to legislation and regulation

Here is a sampling of some of the various employment and benefits laws that apply to employers and the benefits they provide (this is *not* exhaustive – only partially representative!):

## Employment Law (HR)

Fair Labor Standards Act/Wage & Hour  
Family & Medical Leave Act  
Americans with Disabilities Act  
Title VII of Civil Rights Act  
Pregnancy Discrimination Act  
Age Discrimination in Employment Act  
Uniformed Services Employment and  
Reemployment Rights Act  
Genetic Information Non-discrimination  
Act  
Consumer Credit Protection Act  
Equal Employment Opportunity  
Equal Pay Act  
Immigration and Reform Control Act  
WARN Act  
I-9 requirements

## Benefits Law

ERISA  
Patient Protection and Affordable Care Act  
Internal Revenue Code Sec. 125  
HIPAA  
COBRA  
Women's Health and Cancer Rights Act  
Newborns' and Mothers' Health Protection  
Medicare Secondary Payer Provisions  
Qualified Medical Child Support Orders  
Mental Health Parity Act  
Children's Health Insurance Plan  
requirements  
Same-sex marriage supreme court decision

Keep in mind that part of the human capital compliance risk management analysis process is to consider the risk resulting from

- **Coordination** of various HR functions
- **Coordination** of laws when two or more such laws affect an employee or situation simultaneously (stay tuned for more on this)

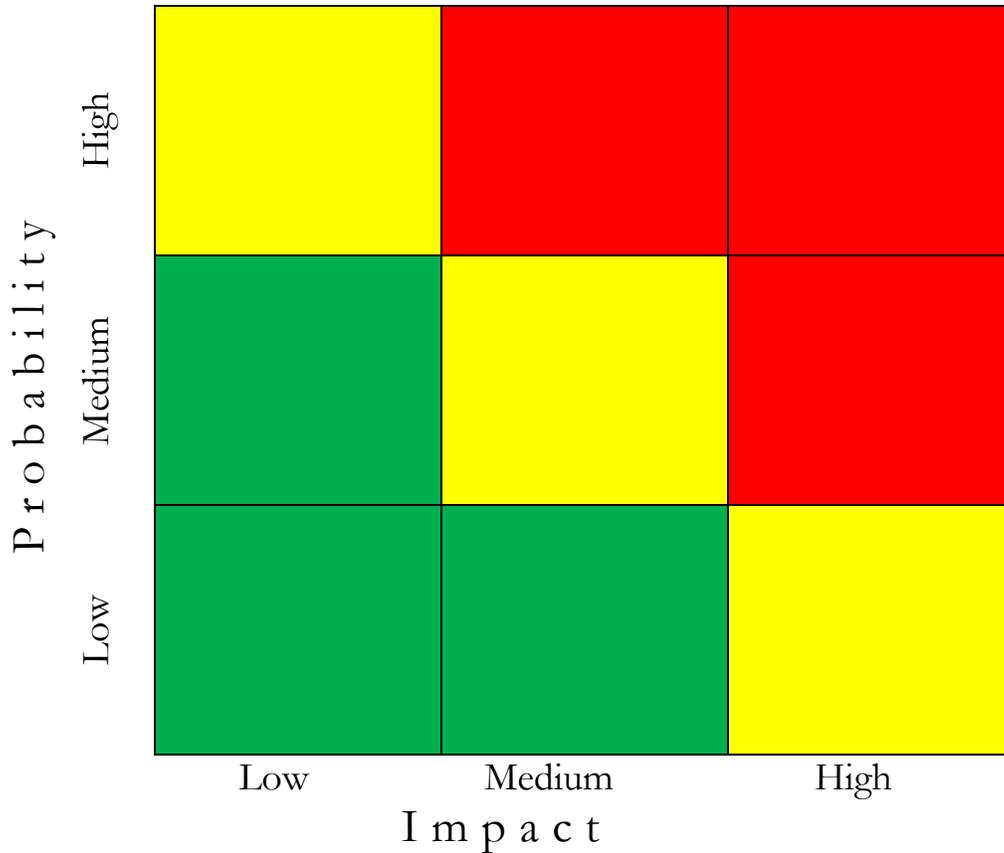
## Risk Prioritization

Each potential talent risk needs to be prioritized. With respect to each type of risk:

- How **relevant** is the risk to your organization?
- How **likely** is it that this risk will occur?
- How material an **impact** would this risk impose on your organization?
- If the risk is relevant and material, is it an **enduring** risk?
- If the risk is relevant, material, and enduring, is it **addressable**?

*It is critical that you focus your time and resources  
where talent risk is most acute!*

# Risk Mapping/Risk Prioritizing (Analysis & Evaluation)



How likely? x How serious? = Priority

4 = Extremely

3 = Very

2 = Moderately

1 = Not very

0 = Not at all

16 = Extreme priority

12 = Top priority

8-9 = Moderate priority

3-6 = Lower priority

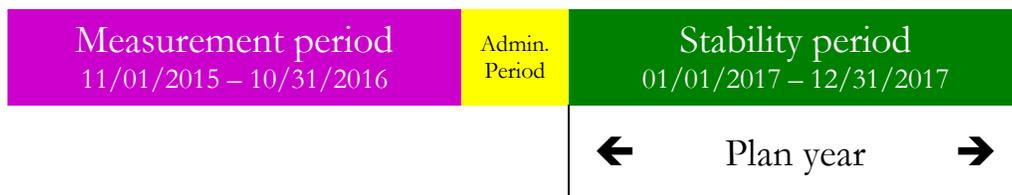
1-2 = Very low priority

# Human Capital Risk Example #1

## Employer Shared Responsibility "MISTAKE"

For unwary employers with poor tracking, management and monitoring, a potentially expensive consequence could occur.

Measurement, Implementation, & Stability (period) Tracking And Klassification Error



Employer identifies 400 employees as “full time” under PPACA (averaging 30+ HPW), and 80 employees as “part time” under PPACA (averaging less than 30 HPW).

Employer offers health coverage to the 400 employees classified as “full time,” and spends \$3,000,000 in premium contributions (employer subsidies). No assessable payments (ESR penalties) are anticipated because 100% of “full time” employees have been offered coverage and the employee contribution for employee-only coverage is less than 9.56% of minimum wage at 30 HPW.

In analyzing actual hours worked data while preparing the “Large Employer Report” in early 2018, it is discovered that 24 out of the 80 employees to whom it did not offer coverage in 2016 did, in fact, average slightly more than 30 HPW during the measurement period. Therefore, the employer offered coverage to only 94.3% of its employees who actually averaged 30+ HPW. Though this was not its intent, the employer is actually a “non-offering” employer. If just one of its employees purchases coverage on a public exchange (“marketplace”) with a subsidy, it will be assessed by the federal government . . .

$$\$2,320 \times (424-30) = \$914,080$$

***This would be a 30% increase in its total cost over what was expected for the plan year.***

What type of human capital risk exposures are present in this example?  
How would you assess these risks?



# Human Capital Risk Example #2

## FMLA Leave and Reasonable Accommodation

**Situation:**

Employee cannot work due to a serious health condition. The serious health condition is an ADA-qualifying disability. A reasonable accommodation may allow the employee to return to work.

**Issue:**

Can or should the employer offer a reasonable accommodation for the employee to return to work or would this violate the FMLA?

**Rules:**

FMLA – must allow leave for an employee with a serious health condition.

DOL §825.112

ADA – cannot prevent disabled employee from returning to work by withholding an offer of available reasonable accommodation.

EEOC §1630.9

**Response:**

Allow the employee to take FMLA leave. If reasonable accommodation is available, offer it and document the offer, but do not require return to work. If employee refuses return to work with reasonable accommodation, document refusal and allow FMLA leave.

EEOC Fact Sheet on FMLA, ADA, and Title VII of the Civil Rights Act of 1964, Q-18

## Extending Leave Beyond FMLA

**Situation:**

After 12 weeks of FMLA-qualifying leave, the employee is not yet able to return to work, and has requested additional leave.

**Issue:**

Are job protections for the employee exhausted after 12 weeks or does the ADA provide additional protections?

DOL §825.214

**Rules:**

FMLA – provides job reinstatement rights for leave up to 12 weeks.

EEOC §1630.14 and other EEOC guidance

ADA – requires job-protected leave as a reasonable accommodation in some instances, absent undue hardship.

EEOC Guidance: Reasonable Accommodation and Undue Hardship Under the ADA

**Response:**

First, consider or re-consider any appropriate reasonable accommodation(s) that would allow the employee to return to the original job. Consider other possible accommodations, such as **job restructuring, working at home, and reassignment to a vacant position**, etc., for which the employee is qualified. Any reasonable accommodation(s) that do not impose an undue hardship should be considered, and the most effective (not necessarily the most expensive) accommodation should be offered. If this is not possible, or would impose an undue hardship, an extended leave should be considered as a reasonable accommodation if the extended leave period does not impose an undue hardship on the organization.

Remember that the ADA generally requires reinstatement to the **original** position after leave as a reasonable accommodation.

What type of human capital risk exposures are present in this example? How would you assess these risks?

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## Human Capital Risk Example #3

Consider the following scenario.

The head of Human Resources (CHRO, VP of HR, or HR Dir./Mgr.) becomes aware of the following:

- **Turnover**
  - HR metrics indicates an increase in turnover over the last 6-12 months
  - Exit interview data indicates that a preponderance of voluntarily departing employees cite one or both of the following as primary reasons for their termination:
    - The new job/employer will provide higher base compensation
    - The new job/employer will provide opportunities for greater professional development and advancement opportunities
  - A larger than proportional number of departing employees reported to the same two or three managers
- **Compensation**
  - Over the last 6-12 months, there has been a notable increase in the number of managers asking HR for an exception to raise an employee's base compensation mid-year because the employee claims he/she has received an offer from another employer that pays better
  - In most of these situations, the managers have been able to "save" the employee from leaving by offering them a mid-year compensation increase – most employees who have *not* been "saved" report "greater opportunity for advancement" as their primary reason for leaving
  - This situation is resulting in:
    - Higher overall compensation costs than were budgeted/anticipated
    - Some pay inequities between departments and between employees with similar experience/skills/performance ratings
- **Key Talent**
  - It is becoming increasingly difficult to recruit and hire qualified talent in technology and engineering as well as a few other in-demand areas of expertise
  - There is limited credible data available internally that would point to a singular factor or group of factors driving this situation
- **Strategy & Outlook**
  - The organization's chief executive has communicated a goal of growing the organization by 25% to 50% over the course of the next five years, through a combination of organic growth and acquisition
  - With this growth will come a significant need for increasing management skills and leadership capacity to effectively manage and lead the organization through this period of growth

What type of human capital risk exposures are present in this example?  
How would you assess these risks?



# Risk Treatments

There are many alternatives for dealing with risk. With respect to each type of risk, you will need to determine – *in consultation with senior executives* – how you will treat it:

- **Tolerate** – take no action
- **Eliminate** – take action to remove any possibility that it will occur
- **Minimize** – reduce the likelihood that it will occur, and/or its impact to the organization should it occur
- **Transfer** – purchase insurance against it, or otherwise assign the risk to an external party
- **Diversify** – spread it across a number of different areas
- **Concentrate** – isolate it into one area
- **Hedge** – assume additional risk to be able to reduce exposure, should it arise

# Human Capital Risk – Application Example

*Your organization offers health insurance to employees. The premium you require employees to pay for employee-only coverage on the lowest cost plan will likely be greater than 9.69% of some employees' modified adjusted gross income.*

Monthly premium for employees @ 30 HPW making twice minimum wage is about **\$20/mo.** higher than **9.56%** of income.

Number of employees likely affected: **10**

Subsidies required across the board for **150** employees purchasing employee-only coverage to ensure cost of employee-only coverage is less than 9.69% of income for all employees: **\$36,000**

Assessable payment for 2017 is **\$200/mo.** (\$3,480/year) for each month that an employee purchases subsidized coverage on a public Marketplace (exchange).

★ ★ ★

What type of human capital risk exposures are present in this example?



What factors should you consider?

Analyze this risk.

Evaluate this risk.

Determine the appropriate treatment for this risk.

With whom must you communicate and consult? About what?

## Post-Treatment Actions

Once the appropriate treatment of various risks is decided upon, attention turns to executing each treatment, and then communicating it to the appropriate parties, such as:

- Senior executives
- Board of directors
- Other governing body or individuals

Then, the ongoing process of risk monitoring and review continues. Talent risk managers must continuously assess existing and developing risks.

If and when specific risks are experienced as events, the communication and monitoring process continues by communicating to senior executives and governing bodies what occurred, and how that risk is being handled in accordance with the strategic risk management plan.

