



Human Resources Notes

“The aim of Human Resources Notes is to provide concise information on topical human resource management issues to guide effective people management practices.” Peter Fisher, Executive HR Consultant (THCS)

In this issue

- Five contributors to effective succession planning
- An employee is jailed, now what?
- An employer’s vicarious liability in sexual harassment cases

Five contributors to effective succession planning

Succession planning is a proactive process to identify and develop talented employees within the organisation who can be considered for promotion when vacancies in senior positions arise. By creating a supply of readily available high performing people at key leadership levels, succession planning underpins business sustainability and growth.

An organisation is more likely to perform effectively if the organisation fills most key leadership positions from internally developed personnel. (Cannon and McGee, 2011)

Here are five contributors to an effective succession planning programme:

1. Ownership by line management

Companies successful in actively developing leaders and promoting people from within don’t abdicate succession planning to HR. Senior line executives regularly review the talent pipeline and

assess the progress being made with succession planning. Line managers are responsible for identifying potential successors, developing them and giving them performance feedback. The role of HR is to support this process.

2. Integration with other human resources programmes

Succession planning will not work without it being tied into an organisation’s leadership development. On-the-job learning experiences should be at the centre of potential successors’ development plans. Charan (2008) advocates an Apprenticeship Model to develop potential successors. People learn by doing and the model provides for a rolling loop of practice, feedback, corrections, practice... Conger and Fulmer (2003) point out that real-life exposure to a variety of jobs and bosses using techniques like job rotation, special assignments and “action learning,” are important.

Performance management is another HR process which supports succession planning. Potential successors must have clear performance goals and their leaders must give regular feedback against those goals. Also, succession planning is an input to the attainment of an organisation’s numerical employment equity targets.

3. Keep it simple

Don’t allow your succession plan to get bogged down in the bureaucracy of forms, charts, meetings, due dates and checklists. That approach is likely to leave line managers feeling that succession planning is a waste of scarce time. Most of the time allocated to succession planning should go into activities directly related to developing members of the potential successors pool. (Goldsmith, M. 2009). Goldsmith also says that companies should avoid overcomplicating assessment criteria and methods for choosing potential successors.

4. Be transparent

Managers must inform employees identified as potential successors of their inclusion in the talent pool targeted for future promotion. It is motivating for an employee to know that she has been noticed by top management and that she is getting exposure to leadership development opportunities. Inclusion in the potential successor pool must be fluid. Employees should always believe that they have the opportunity through personal effort to get onto the leadership list. Any employees who are picked but do not live up to their identified potential must understand they will drop off. Not every potential successor will be promoted, so managers must avoid making promotion promises.

5. Track implementation

With a focus on implementation, you will need to decide on which performance indicators of your succession planning process you will track. Two such performance indicators are “Bench Strength” - the percentage of ready now candidates for the positions you have in your succession plan and “Appointment Ratio” which is the number of key appointments made from the potential successor pool. Other measures of succession planning include employee turnover in the potential successor pool; employee tenure and turnover in the ranks of promoted employees (compared to employee turnover in all categories of employees); number of employees in the potential successor pool per critical position; and readiness of potential successors (immediate, within 12 months, or within 24 months).

An investment in effective succession planning is an investment in the long-term health of a company. Please write to us, or give a call if you have a success story to share about your company's succession planning. We value new insights.

- Cannon, J. and McGee, R. (2011). *Talent Management and Succession Planning* 2nd ed. London: Chartered Institute of Personnel and Development, p. XI
- Charan, R. (2008). *Leaders at All Levels*. San Francisco: John Wiley & Sons, p. 2
- Conger and Fulmer (2003). *Developing Your Leadership Pipeline* *Harvard Business Review*. December Issue.

[Available at https://hbr.org/2003/12/developing-your-leadership-pipeline&cm_sp=Article--Links--End%20of%20Page%20Recirculation [accessed 30 August 2016]

- Goldsmith, M. (2009). *4 Tips for Efficient Succession Planning* *Harvard Business Review* [online] <https://hbr.org/2009/05/change-succession-planning-to> [accessed 30 August 2016] ■

An employee is jailed, what now?

On 20 May 2006 at Samancor Tubatse Ferrochrome, a furnace operator employed by the mine was arrested on suspicion of armed robbery. How would you deal with a case like this?

Samancor dismissed the employee on 30 May 2006 on the grounds of incapacity, in that he was physically unable to work. On 6 June 2006, the employer informed the employee that he was dismissed. This was done by letter delivered to the police station where the employee was being held. The employee was released after spending 150 days in jail. Criminal charges were still pending against him. The employer held a post-dismissal hearing and upheld the dismissal decision.

At CCMA arbitration, the commissioner found the dismissal to be procedurally and substantively unfair and reinstated the employee. The employer took the case on review to the Labour Court but the court agreed with the CCMA award. The employer then appealed to the Labour Appeal Court (LAC).

The LAC came to a decision different from the CCMA and Labour Court. With reference to existing jurisprudence, the LAC found that incapacity is a concept broad enough to accommodate incarceration. In this particular case, the LAC took into account the facts that the employer had no idea as to how long the incarceration would endure and further, the skilled nature of the employee's position made it commercially necessary for the employer to make an expeditious decision about the employee's future. Based on this assessment, the LAC found that the employee's dismissal was substantively fair.

However, the LAC found the dismissal to be procedurally unfair. The employer, by merely providing the employee with a dismissal letter while he was in prison did not give the employee a fair opportunity to present his case. Further, the post-dismissal enquiry was nothing more than an *ex post facto* rationalisation of the earlier dismissal decision.

While the LAC found the employer's decision to be substantively fair, it ordered the employer to pay the employee six month's remuneration as compensation for the procedural unfairness.

Samancor Tubatse Ferrochrome v Metal and Engineering Industries Bargaining Council (MEIBC) and Others (2010) 31 ILJ 1838 (LAC) ■

An employer's vicarious liability in sexual harassment cases

This case note contains graphic detail of an incident of sexual harassment.

He held the senior position of Corporate Services Manager at a municipality in the Eastern Cape. She was an Archives Clerk at one of the municipality's satellite offices and she reported to him. Their duties required that from time to time they would work alone in the office. On one such occasion, he said to her that they were alone and that if they did something nobody would know about it. She responded that she was not interested in whatever it was that he was talking about and he backed off.

Some three weeks later they were again alone in her office. "After greeting her he walked directly to where she was sitting at her desk. As she looked up he bent down with his head over hers and, putting his mouth over hers, attempted to force his tongue into her mouth. She clenched her teeth and tried unsuccessfully to push him away. After a minute or so he desisted, leaving her with a mouthful of his saliva." [Para. 11 of the judgement]. Her revulsion was clear to him and he backed off.

The next day, she reported the matter to senior management, who sent her on special leave for the rest of the week and barred him from having any contact with her until investigations into his actions were finalised. The bar on contact was ineffective and his path crossed with hers several times in the following weeks. She said that at the mere sight of him she became anxious and started trembling. She was subsequently diagnosed with Post Traumatic Stress Syndrome and needed psychiatric treatment. He appeared at a disciplinary enquiry and was suspended without pay for two weeks as a penalty for his actions.

She also laid a criminal charge of "*sexual assault*" against him. He pleaded guilty as charged and was sentenced to a suspended term of imprisonment.

Her working life did not return to normal and unavoidable contact with him at work left her anxious and unable to function normally. She was plagued by nightmares. Around eleven months after the incident she could bear it no longer and resigned.

She approached the High Court in the Eastern Cape and claimed damages jointly and severally from the first defendant (the employer), Ikwezi Municipality, and the second defendant (the assailant) Xola Vincent Jack. The court has protected the victim's identity and I shall refer to her as "the plaintiff" hereinafter.

The judge was scathing in his criticism of the employer's disciplinary process and outcome. He said the enquiry chairperson's characterisation of the assailant's action as an "attempted kiss" was misdirected. It was a sexual assault. The judge found that the imposition of a two-week unpaid suspension for the incident was lenient. Dismissal was appropriate for the assailant's "despicable and violent abuse of his position of authority".

In respect of liability for damages to be borne by the employer, the judge found that the employer had failed in its legal duty to protect the plaintiff from further trauma occasioned by any interaction with the assailant pending the disciplinary enquiry.

This limited liability was conceded to by the employer. However, the judge went further.

The judge found that in recent years, there has been a growing realisation and appreciation of the prevalence and the devastating effects of sexual harassment in the workplace both in South Africa and in other jurisdictions. Such conduct poses a barrier to the achievement of substantive equality in the workplace.

The judge found that he was under a duty to develop the common law and hold the employer vicariously liable in circumstances where one of its employees was subjected to sexual harassment by another superior employee. This was in line with promoting the spirit, purport and objects of the Bill of Rights in the Constitution.

The judge reasoned as follows: The employer placed the assailant in the situation where he was able to act as he did. The employer gave the assailant the authority to control the conditions under which the plaintiff, as his subordinate did her daily work. This employment relationship facilitated his actions. In these circumstances, when an employer places an employee in a special position of trust, the employer bears the responsibility of ensuring that the employee is capable of trust. That trust “*forged a causal link*” between the assailant’s position as Corporate Services Manager and the wrongful act.

The judge ruled that the employer and assailant are jointly and severally liable for damages the plaintiff has suffered in consequence of the sexual assault upon her. The quantum of damages will be determined in separate court proceedings.

This judgement places responsibility on employers to take all reasonable steps to prevent sexual harassment. A policy aligned with the relevant Code of Good Practice should be put in place and employees must be trained on the subject of sexual harassment and consequences of misconduct. Where sexual harassment takes place, an employer must act decisively, and always with focus on protecting the dignity and interests of victims. Senior employees who sexually harass

more junior employees should expect to be dismissed.

P.E v Ikwezi Municipality & Xola Vincent Jack in the High Court of South Africa Eastern Cape Division, Grahamstown, (828/2011) 31 March 2016, before Pickering, J. ■

The contents of Human Resources Notes do not constitute legal advice. For specific professional assistance tailored to your needs, always consult an expert.



Essential Supervisory Skills

A one-day participative training experience packed with practical insights and information to foster supervisory performance excellence

Date: 27 September 2016

Time: 09:00 – 16:30

Venue: Hurlingham Office Park, Sandton

Facilitator: Peter Fisher

Who should attend

Supervisors, team leaders, first line managers, newly appointed junior managers and candidates for appointment into in supervisory positions.

BOOK NOW

Contact Marinda Piek
Tel: (011) 100 8100