GOERING CENTER

Since 1989

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Established in 1989, the Goering Center is the country's largest university-based educational resource for family and private businesses.

Carol Butler, President
Sarah Dieckman, Editor

Don't let challenges keep you from celebrating all that's good

By Carol Butler, President
Goering Center for
Family & Private Business

Looking back through my commentaries over the past two years, a word that comes up repeatedly is "challenges". And while as a community, country, and world we are still facing significant challenges that we can't ignore – including supply chain issues, a labor shortage, and inflation – we need to take time to celebrate what's good.

One cause for celebration is the reopening of our region as we've learned to live with COVID-19. Just like the businesses in our community, the Goering Center is open for business, and one of the first things on our agenda is to celebrate our members through our upcoming Family and Private Business Awards (FPBA).

The focus of our awards this year is The Power of Company Culture. Now more than ever, a company's culture matters. An organization's shared values, beliefs, goals, and practices not only set the tone for everything the company does, but also affect how employees feel about the work they do, where they see the company going, and ultimately how long they stay. That's crucial in the era of the Great Resignation and the Great Reawakening. We want to know what your business is doing right, so we and our members can learn from your best practices.

Nominations for the 23rd Annual FPBA are open through May 27, and completed applications are due on June 15. You can find award criteria and nomination and application forms on our website (goering.uc.edu/awards). If you haven't already nominated your business for an award, please take a few moments to do so now. Not only is the recognition great for your company and employees, but your experiences have the power to help other family and private businesses develop and grow, further boosting our community and our reputation as a thriving business region. Please nominate other businesses that you believe are successful due to the power of their company culture as well.

We'll announce the winners during a live event on September 13 at Hard Rock Casino Cincinnati. We look forward to celebrating the Greater Cincinnati businesses and leaders who have positively impacted their organizations and the community through exceptional achievement.

A recent special event for our members and partners highlighted the optimism that many of us are feeling this year. Family Enterprise USA (FEUSA) President Pat Soldano presented findings from their 2022 Family Business Survey. Despite familiar concerns including inflation, labor issues, the pandemic, and tax worries, the survey found that an astounding 88.5 percent of America's family businesses expect revenues to increase in 2022, thanks to strategic choices they made and improving economic conditions as the pandemic recedes. Talk about something to celebrate! If you weren't able to participate in the live webinar, you can visit our website to see Pat's presentation.

In addition – John Augustine of Huntington Bank shared that it has been a difficult, but profitable 12- to 18-months for many businesses in the Cincinnati area, but challenges continue to mount around inflationary pressures, higher borrowing costs, shifting supply chains, and a tight labor market. Small business owners will need to be adaptable in the months ahead and should concentrate on managing both sides of their personal and business balance sheets.

The Goering Center's mission and purpose is to nurture and educate family and private businesses to drive a vibrant economy in the Greater Cincinnati region. We work hard to be a valued partner delivering knowledge, connection, and community. Our commitment to our members is to go both broad and deep. We will continue to bring you relevant offerings – in person and online – including an expansion of our diversity and inclusion initiative. We seek continued depth of membership by welcoming all family and private businesses to the Center. We're here to help and, in the face of headwinds, remember this: we are stronger together as we share, learn, and support each other.

Business-to-Business Payment Fraud: The Risks are Serious and Can Be Substantial

By Alex Doehr, Treasury Management Strategy & Execution Director at Huntington National Bank

You've likely read about the risks of business-to-business (B2B) payment fraud. But you might not be aware of just how rampant the issue has become. According to the 2021 Association for Financial Professional (AFP) Payments Fraud and Control Survey, 74% of surveyed businesses experienced attempted or actual payment fraud in 2020 .

Doehr

Companies of all sizes can be potential targets, especially during times of crisis. Criminals often take advantage of these moments to increase their efforts. The COVID-19 pandemic has presented that kind of opportunity, and business owners need to be aware of the risks and take action to manage, control, and mitigate those risks.

HOW IT HAPPENS

Payment fraud occurs through a variety of methods, from age-old schemes to new, technology-driven tactics. Here are the most common types reported in the AFP survey[1]:

- Business email compromise (BEC) is a sophisticated tactic that targets individuals who perform wire transfer payments. Criminals create what seems like a legitimate email account and request payments to a fraudulent account. In 2020, 76% of surveyed organizations experienced at least one instance of BEC.
- Check fraud remains one of the most prevalent forms of payment fraud. While paper check use has steadily declined as automated payments become more common, plenty of organizations still rely on them: as of 2019, 42% of surveyed organizations still use paper checks for B2B payments.
- Wire-transfer fraud has decreased in recent years, from 48% in 2017 to 39% in 2020. Although businesses are experiencing fewer instances of wire-transfer fraud, this type of fraud remains a continued threat especially as BEC activity increases.
- Automated Clearing House (ACH) transactions have historically been considered more secure than checks. However, as organizations shift away from using checks, fraudsters are targeting ACH payments at a higher rate. Organizations experienced slightly higher rates of ACH debit fraud in 2020 than in the previous year.

WHY IT MATTERS

Although incidents of attempted or actual fraud dropped slightly in 2020, almost three-quarters of companies were still impacted. Financial losses from payment fraud can cripple a business, but damage to the reputation of an organization should also be considered.

Businesses need to be aware that criminals are getting more savvy, and technology is getting more complex. Without taking steps to mitigate fraud, the chances of being compromised are higher.

WHAT YOU CAN DO

The first step to managing and helping to mitigate payment fraud is to acknowledge that it's a reality. Then, create a plan to help minimize your exposure that includes talking with your banking partner about solutions to help prevent or mitigate possible fraud situations. If fraud does occur on your accounts, file a complaint with www.ic3.gov. It is vital you provide as much detail as possible.

For additional information on helping to prevent B2B payment fraud, visit www.ic3.gov for public service announcements on payment fraud trends and cybersecurity best practices.

[1] Association for Financial Professionals. 2021. 2021 Payments Fraud and Control Survey Report. Bethesda: Association for Financial Professionals. Accessed February 22, 2022.

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WHOLE NEW EXPERIENCE
September 13th

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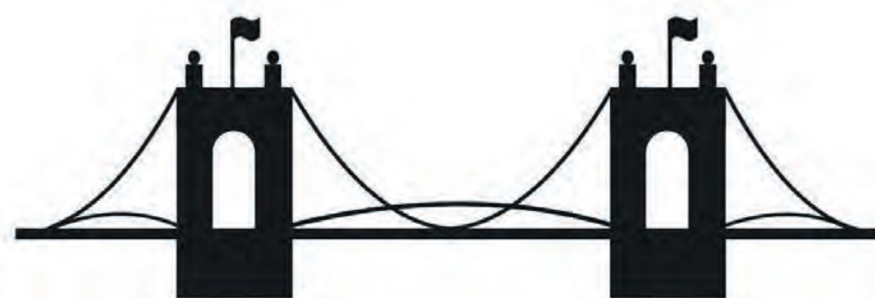
goering.uc.edu/awards



The Goering Center is a valued partner delivering knowledge, connection and community.

Three Security Controls (for Cybersecurity and Insurance)

RISKSOURCE CLARK-THEDERS

By Jonathan Theders, Chief Executive Officer, RiskSOURCE Clark-Theders

With cyberattacks surging, cyber insurance companies have adjusted their underwriting practices to help mitigate the risk of costly claims. They are requiring more substantial documentation including detailed information on workplace cyber policies, incident response planning, employee training, and security software capabilities. Some cyber insurance companies have decreased their risk appetite and reduced coverage offerings—especially as they pertain to protection for losses stemming from cyber events that are on the rise (e.g., ransomware attacks). The following three security controls are often required to obtain cyber coverage:

Theders

1. Multi-factor Authentication (MFA) requires users to provide two or more credentials to gain access to an account. Rather than just asking for a username and password, MFA requires additional verification factors, decreasing the likelihood of a successful cyberattack. Typically, MFA involves something you know (password/PIN), something you have (hardware token/cell phone), and something you are (fingerprint/face scan). Organizations should look to secure any remote access points to their systems or data with MFA, and it is typically required for:

1. Privileged user account access (e.g., administrator access)
2. All remote access to the network or cloud solutions
3. Remote access to email

Internal usage of privileged accounts, such as local administrators, should be secured with MFA, or have good compensating controls. It may be necessary to hire experts to help implement MFA, especially if it's a hybrid on premise and cloud environment.

For remote access, check whether the VPN or other remote access tool has MFA as a free option. If not, you'll will need to identify an MFA tool that integrates with your software or hardware.

For email and cloud, major cloud email providers have a free MFA solution, regardless of the subscription level purchased. Most other cloud software comes with free MFA solutions that just need to be turned on, especially software being used to store sensitive data.

2. Multiple Backups allow for faster recovery time and can reduce or eliminate loss of income if a ransomware attack should occur. Backups should be created according to the "3,2,1" rule: 3 copies of data, in 2 different media, with 1 offsite, and test! Training employees on backup procedures and testing backup systems is essential, and doing a Business Impact Assessment (BIA) is recommended. A BIA identifies an organization's most critical systems and predicts the impact a disruption would have on business operations. It's also necessary to develop recovery strategies in the event of an outage or cyber incident.

Underwriters want to know that there are formal processes for regularly backing up, archiving, restoring, and segregating sensitive data. They also want to see the "3,2,1" rule being followed. Whether by human error or cyberattack, if your system goes down, you are only as good as your backup(s).

3. Endpoint Detection and Response (EDR) is next generation antivirus software that provides real time protection for all devices connected to a network. EDR relies on artificial intelligence, data analytics, and machine learning. It works in nearly real time and at a network level, instead of a device level, to protect all endpoints. EDR continuously hunts the network, seeking out dormant or fileless malware that may be preparing to strike. It can then automatically respond to identified threats by removing or containing them and notify security personnel.

When evaluating an EDR solution, be mindful of the features listed above. Some antivirus software may appear to have many bells and whistles, but ultimately lacks necessary key functionality.

By having the above cyber security controls in place, you are more likely to obtain favorable terms on a cyber insurance policy and greatly reduce the risk to your organization. Know the different types of cyber coverage available and secure a policy that suits your unique needs. Even if you don't hold or plan to hold a cyber policy, your organization is better off with cyber security controls in place.

For more information, contact Jonathan Theders, CRA, ACRA, RiskSOURCE Clark-Theders, Chief Executive Officer, at jtheders@risksource.com or 513-644-1263.

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Avoid Strife with Thoughtful Planning for the Succession of Your Family Business

KATZ TELLER

By Margaret G. Kubicki, Shareholder, Katz Teller

Business succession planning may pose challenges for ensuring the viability of the company for the next generation. Since business interests are frequently transferred to the next generation upon the owner's death, the owner's interest will be held by the trustee of the decedent's trust. The trustee (perhaps a surviving spouse, adult child, or a trust company) may not be in the best position to make informed decisions with respect to the family company. Business owners should consider assuming the responsibility during their lifetime by planning for how the surviving spouse and family members will manage the business after the owner is deceased. Where the voting interest will remain in the owner's trust after his death, consideration should be given to including provisions in the owner's trust for an advisory committee. An advisory committee can operate similar to a board of directors directing the trustee on all aspects of operating the company. The committee could consist of a key employee, a family member, and it could include an individual who works in, or is familiar with, the industry (and not in competition with the company). Members selected should be capable of making business decisions that are in the best interest of the company. Proactively addressing how things will be handled will ward off much angst that can arise for the surviving family members and remaining key employees. Furthermore, acknowledging the potential for future conflict among surviving family members and key employees, and problem solving to prevent potential distrust can ease the transition when the owner dies.

Kubicki

If the decision is made to allow key employees or specific family members to buy the business upon the owner's death, there is usually thoughtful planning around the details of how the owner's interest will be purchased. Regardless of how the interest is purchased, when family members are the potential purchasers of a family business, the buy-sell provisions dictating the purchase price should be tied to the fair market value of the owner's interest. It is problematic if buy-sell provisions governing the company's ownership use book value, or some other value predetermined by the board of directors, to dictate the purchase price. If the purchase price is less than fair market value (FMV), there are inherit deemed gifts (or compensation if an employee is buying) upon the sale during the owner's lifetime. At death, using a value less than FMV for a sale to a relative may cause an unanticipated estate tax. When an individual dies owning closely held business stock, a business valuation is required whenever a federal estate tax return is due. A sale within six months of the owner's death is usually indicative of FMV, unless the sale is to a family member. Then there is extra scrutiny. What if book value is used to determine the purchase price between family members? If the family business owns depreciated assets, the difference between book value and fair market value could be significant. Unfortunately, there are tax rules surrounding family owned businesses that would require a purchase price that is less than the fair market value to be disregarded for federal gift and estate tax purposes. In essence, the owner's federal estate tax return should include the FMV of the business interest even though a buy-sell provision sets a lower purchase price for a purchasing family member. This discrepancy between the fair market value and a reduced price may cause a liquidity problem when federal estate tax is due. Furthermore, if there is a surviving spouse, and the decedent's trust provides that all assets will be placed in a marital trust, the receipt of sales proceeds that are less than the appraised value could result in an underfunded marital trust. This disparity could create an estate tax which would have been avoided had the purchase price equaled the fair market value.

A business owner's legacy will be impacted by how he prepares during his lifetime for the transition at death. Addressing difficult issues while the owner is living and implementing an advisory committee to direct the trustee once the owner dies could help a successful transition. Finally, a purchase price set forth in a buy-sell agreement should use a fair market value when a family member is the intended purchaser to avoid estate tax problems in the future.

Margaret G. Kubicki is a shareholder at Katz Teller – Mkubicki@katzteller.com.

Exit Strategies and Succession Plans During a Pandemic

FIRST first financial bank

By Karina Horton, Director of Business Succession Planning, Yellow Cardinal Advisory Group and First Financial Bank

In a time of uncertainty on so many levels, there are a bevy of questions business owners face on a daily basis. One question I've heard most often lately is, "How did the pandemic affect my exit plan?" Well, kudos to you if you actually have an exit plan. For those who don't or who are still trying to figure out what an exit plan actually is, here are some things to keep in mind.

Horton

Many business owners who are considering their exit plan focus on "the number"— the purchase price for their business. In all likelihood, that number won't have changed much because of the pandemic. The foundational piece of information for most owners is about the value of the company. It seems natural to assume that a business that struggled through the pandemic would see its value drop accordingly and vice versa. However, the reality in most cases is that the value is likely still in the same neighborhood, but the terms will change.

Regardless of the chosen exit strategy, the financials used are typically not just those from the most recent year. Instead, financials going back at least three, but preferably five years, or even longer, are used. This helps to smooth the ups and downs to a more normalized trend. When evaluating the financials through the lens of COVID-19, the real question becomes not what the numbers were, but what they will be. For those who struggled, it's about how quickly they can recover to pre-pandemic levels. For those who flourished, it's about sustainability going forward.

EMPLOYMENT CONTRACTS AND EARNOUT PERIODS

All of this explains why it is the terms of today's agreements that have shifted, not the value of the business. Buyers want assurances, in the form of a longer transition period for the seller or longer, more engaged employment contracts. Before the pandemic, it was common, for example, to have a two-year employment contract put forth. Frequently, though, just nine to 12 months in, the buyer could say, "We've got this, you can go home now." That trend has definitely changed. Expect to fulfill the full term, and not just in a casual consulting way, but as a fully engaged member of the team, working just as hard as you did before you sold the company.

Earnouts have become an even bigger part of today's deals. Earnouts are common in most transactions, but COVID-19 has raised the bar on meeting loftier goals. Targets are tighter and amounts are higher as buyers attempt to shift future risk back to the seller. If the seller makes the goal, everyone wins. But buyers are not willing to offer as much up-front cash predicated on the promise of future cash flows.

The target could also be something other than a revenue or EBITDA goal. We are seeing earnouts being tied to broad employee retention, for example – something unheard of before now.

OUTSIDE INFLUENCES

Supply chain disruption, labor shortages and rising taxes are after-effects of the pandemic, and the exit plan can't ignore them. A seller needs to ensure continuity to maintain what customers, employees, family, and the potential buyer have come to depend upon. Whether the buyer is an outside company, an ESOP trust, management team, or family member – they all need to know that the cogs are in place and the wheels are turning, even after the exit, intentional or otherwise.

There are other important steps toward smoothing the jagged edges of a future succession plan and creating a highly transferable business. Build in options to attract and retain talent. Establish a balance between cash on hand to snap up inventory without creating a large future write-off. Create a solid personal wealth plan to mitigate risk. Plan for higher tax rates and lower estate exemption amounts. Make sure your personal wealth plan is thoughtfully coordinated with the business's financial plan, especially in areas such as trust management. These are all important steps to make the transition more successful for the business owner, the buyer, and importantly, everyone who relies on the business's success.

We are still navigating toward what we hope is soon to be a post-COVID future, but the fear of the unknown is ever-present in the back of our minds. Some of us are asking, "What if it happens again?" I can't promise it won't, but by taking steps now to plan ahead, business owners are ensuring a better outcome for every possibility.

For more information, contact Karina Horton at 513-979-5798 or Karina.Horton@YellowCardinalAdvisors.com.

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Reimagining the Workforce for the Digital Age

An RSM and U.S. Chamber Discussion

By Joe Brusuelas, Principal and Chief Economist, RSM US LLP

"As the pandemic has convulsed America's real economy, middle market businesses have had to contend with profound changes to their workforces," said Joseph Brusuelas, chief economist of RSM US, and Neil Bradley, chief policy officer of the U.S. Chamber of Commerce.

Brusuelas

The comments were part of a wide-ranging discussion about today's labor market and the American economy in a recent quarterly webcast sponsored by RSM and the Chamber.

"The changes in the labor force have left many businesses scrambling just to retain the workers they have, let alone find new ones. In many cases, those workers have left the labor force," Brusuelas and Bradley said.

As a result, executives will need to reimagine their workplaces, rethink their benefits and reconsider their recruitment if they want to compete in the emerging digital economy.

THE LABOR SHORTAGE

Bradley noted that the economy is still around 4.5 million workers short of where it was before the pandemic, even after the January jobs data showed a healthy increase in the number of people returning to the labor force.

He cited a host of factors behind this shortage:

- Workers retiring: 2.4 million more workers have retired during the pandemic than otherwise would have been expected—a significant loss of experienced and knowledgeable employees.
- Mothers staying home: 1.4 million fewer mothers are working as they have picked up the burden of child care in the face of closed schools and day care centers.
- Immigration declining: About 1 million fewer college-educated immigrants have entered the country legally in what amounts to a talent drain on America's digital economy.

The result of these trends has been a slowing in the growth of the American labor force. What used to be a 1% annual increase in the size of the workforce has now slowed to a tepid 0.2% during the pandemic.

One factor behind this trend has been a significant shift in attitudes toward work, embodied in what has become known as the Great Resignation.

"There is a regime switch of the willingness and availability of workers to participate," Brusuelas said. "Without a growing, dynamic labor force, the American economy stagnates," he added.

RETHINKING THE WORKPLACE

"This decline poses a challenge to employers that was hard to imagine before the pandemic. As a result, businesses will have to go beyond offering higher compensation and better retirement benefits to recruit workers. It requires more flexibility—and businesses will have to adjust," Brusuelas said.

The days of showing up at a job at 8 a.m. after a 45-minute commute and leaving at 7 p.m., only to have another 45 minutes of staring at brake lights are, for many workers, no longer acceptable.

"Firms are going to have to be quite nimble," Brusuelas said. And this need for flexibility only becomes more acute as older workers leave the labor force. Younger workers, Brusuelas added, are insisting on a different work-life balance.

RETHINKING BENEFITS

To find these workers, particularly younger ones, Bradley said that employers must rethink their benefits packages and get past the long-gone era when mothers stayed at home.

For example, employers should consider offering on-site day care for those families pulled between competing obligations of family and work, or be more willing to offer part-time employment options. This is particularly true for women. And for younger workers, employers should consider expanding benefits to address the often crushing burden of student loans.

"Smart employers are thinking about employees' needs like student debt payments, providing a flexible work schedule and helping children in need of care," Bradley said.

"Revising the nation's tax policy—like offering a tax credit for providing on-site day care or offering incentives for employers to help workers with student debt payments—would help to these ends," Bradley added.

RETHINKING RECRUITMENT

Employers also need to cast a wider net for job candidates. The workers are out there—but employers need to find them.

One way to find more candidates is to rethink the recruiting process by adjusting something as simple as a job description.

Younger candidates, for example, fluent in the lexicon of the digital age, describe their skills in ways that are concise and to the point—which is often at odds with the sometimes long-winded prose of employers' job descriptions.

"There is a mismatch in the way employers and employees describe their skills," Bradley said.

Brusuelas even saw it as an opportunity. "There is a cottage industry out there waiting to be jump-started to better match employers' job needs and workers' skills," he said.

"If their recruitment is not expanded, employers are left poaching from their competitors, and from other industries—all of which hinders economic growth," Bradley said.

THE INFLATION QUESTION

Brusuelas and Bradley also discussed rising prices and their impact on middle market businesses. As the pandemic has evolved, businesses have faced rising costs for a variety of reasons including shortages of raw materials, delays in shipments from supply chain bottlenecks as well as rising labor costs.

At the same time, businesses have made investments in productivity that have outweighed the increasing labor costs. Those investments — some of which were accelerated by the pandemic and are starting to pay off — are one reason corporate profits have remained healthy.

"Any notion that businesses are taking advantage of an inflationary environment and gouging their customers is mistaken," Brusuelas said.

"I don't see any evidence at all of price gouging—what you are seeing is rising productivity," Brusuelas said. "There is no need to demonize American business."

THE TAKEAWAY

Employers who adapt to a rapidly evolving work environment and the changing demands of younger workers will be the businesses that thrive, Brusuelas and Bradley said. To resist the change, they said, only invites a stagnating business, and economy.

For questions or more information, please contact Ken Jenkins at 513-619-2863 or ken.jenkins@rsmus.com.

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Maximize Charitable Impact and Tax Savings with Gifts of Privately Held Stock

By Michele Carey, CAP®, Director, Professional Advisor Relations, Greater Cincinnati Foundation

For most people, charitable giving means donating cash with a check or credit card. You might be surprised to know that cash gifts can be the least advantageous from both tax-savings and charitable impact perspectives. Leave the cash in your wallet, and learn how you can donate appreciated assets or a portion of your business to a donor advised fund to significantly reduce your taxes while creating a way to support all the causes you care about over time.

Carey

Financial advisors and tax experts advise that donating long-term appreciated assets to a public charity will result in the greatest tax-savings as these gifts escape the capital gains tax and are eligible for a federal and state tax deduction. For example, advisors recommend charitable gifts of publicly traded stock, held more than a year, with a low basis.

Real estate is another example of an appreciated asset that can make for a strategic charitable gift. Consider this scenario:

Donor has a vacation home worth $1 million, which she bought decades ago and has an adjusted basis of $0. If she sells the property, she would pay as much as $200,000 in federal capital gains taxes (plus possible state taxes), and (assuming $75,000 of closing costs and brokerage fees), the net amount for charity would be $725,000. If instead she donates the real estate to a charity and that organization sells the home, there is no federal capital gains tax on the proceeds from the sale and the amount for the charity is $925,000. From a tax perspective, a cash donation of $725,000 means a deduction of $725,000. The donation of the home calculates a fair market value donation of $1,000,000.

As a business owner, you also may make gifts of privately held shares of C-Corp, S-Corp, limited partnership, and LLC units to create a charitable fund at a public charity, such as a community foundation, for your corporate or personal philanthropy. The owners of Skyline Chili and the founder of Paycor, Inc. are examples of local business leaders who have taken this approach to meaningfully give back to our region. They encourage other business owners to consider this when thinking about transitioning their businesses to new ownership, whether family members, other shareholders, or outside buyers.

So when is it important to consider gifts like real estate and privately held/closely held business interests? Consider these three scenarios:

1) YOUR COMPANY'S VALUES ALIGN WITH GIVING BACK TO THE COMMUNITY.

In every community, the most generous people are often local business owners who feel a sense of gratitude to customers and partners whose loyalty led to the success of their brand. In addition, many local companies take pride in the way they give back, and their contributions – whether financial, service hours, or talent share – can become a keystone of their corporate values, internal culture, and regional presence. Especially in the wake of the considerable and enduring challenges caused by the pandemic throughout communities, more businesses are answering the call for support and leaning in to help. And in times of such need for staff recruitment and retention, workers commonly show preference for employers that demonstrate good citizenship, community concern, and investment.

2) YOU DESIRE SIGNIFICANT TAX SAVINGS THAT YIELD HIGH CHARITABLE IMPACT.

Privately owned companies typically start at very low basis and, when successful, can rocket in value. These assets often make excellent charitable gifts as donors can avoid paying capital gains taxes on the donated asset and charities receive property that has increased in value. Donors can receive a significant tax deduction equal to current full fair market value of the gift, as determined by a qualified appraisal. This may occur prior to an acquisition, new funding/investor round, IPO, ESOP sale, or other partial or full exit.

By donating to a donor advised fund, you can provide impactful support over time to multiple charities and causes about which you care most. Dollars that would have been paid in capital gains tax become dollars that can support nonprofits working to build a stronger community. A donor advised fund is a flexible charitable vehicle that allows donors to receive an immediate tax deduction while maintaining the ability to later decide which charitable organizations to support and when.

3) YOU'RE THINKING ABOUT TRANSITIONING YOUR BUSINESS TO THE NEXT GENERATION.

Financial and tax advisors encourage clients to think about transitioning a business many years in advance of an actual sale or transitioning it to the next generation. For charitable business owners, considering their philanthropy as part of their exit is a wise consideration from a tax-savings perspective.

For example, founders with closely held, appreciated C-Corporation stock, who are years away from selling their businesses, can employ a strategy to donate personal stock that the company can later buy back from the nonprofit as a "charitable bailout" or "charitable redemption". These gifts allow for the transition of the business to new owners over time while creating a charitable impact.

Community foundations like Greater Cincinnati Foundation have dedicated philanthropic advisors who work with individuals, families, and businesses to facilitate conversations and charitable planning. These discussions can position philanthropy as a tool for demonstrating one's values and passing them to the next generation.

Curious to learn more? Our team at Greater Cincinnati Foundation is happy to talk with you and your tax advisor about the advantages of donating your assets to a donor advised fund. Contact Michele Carey at michele.carey@gcfdn.org to see if this may be an option for you.

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Confusion over Pandemic Compliance Flexibility Poses Risks to Businesses

By Katie P. Jacob, Esq., Dinsmore & Shohl LLP

By now, most businesses have developed some system for tracking remote worker address changes, registering to do business in new remote worker states, ensuring appropriate benefits coverage for each new location, and calculating the proper withholdings – amongst other remote worker issues. However, many employers have not thoroughly examined whether their processes for onboarding new remote worker employees is compliant.

Jacob

One often-overlooked area of any company's on-boarding process is I-9 compliance – an area only made more complex during the COVID-19 pandemic.

Before March 2020, employers were required to perform a Form I-9 "tactile document inspection" – meaning that the employer must be physically present with the new hire, touching the new hire's documents to determine whether they were possibly fake IDs or perhaps documents stolen from another person. In fact, employers were specifically prohibited from remote document review and could not examine a new hire's documents through email, photos, photocopies, Zoom, Skype, etc. The tactile document inspection rule was particularly problematic for some industries including staffing companies, companies with traveling employee populations (e.g., traveling nurses, sales representatives assigned to a territory), and companies that often hire directly at a worksite, such as in construction or agriculture.

U.S. Immigration and Customs Enforcement (ICE) was aggressive about enforcing the tactile document inspection requirement. After an investigation, it fined Employer Solutions Staffing Group II, LLC – a staffing company that has alleged tactile document violations – $226,000.[1]

Enter COVID-19, turning the world in general on its head and forcing people to avoid gathering indoors, remaining six feet away from others, and generally not touching another person's property. On March 20, 2020, DHS announced that it would defer (delay) the Form I-9 tactile document inspection requirement for a temporary period in order to comply with social distancing. Employers were still obligated to review a new hire's documents within the first three business days after the start of employment. However, employers could examine the documents by any reliable electronic means (e.g., video, email, facsimile) and sign the Section 2 attestation with the special notation "COVID-19" as the reason that the tactile document review was not completed. DHS advised that employers would be required to complete the tactile document inspection at some point in the future, once the business returned to normal, in-person operations or when DHS ended the flexibility policy, whichever occurred first. This "flexibility" has been extended for more than two years, and is currently set to end on October 31, 2022.

Employers that long struggled with tactile document inspection rejoiced – perhaps prematurely. In my current practice, I frequently encounter businesses who were not covered by DHS I-9 remote document flexibility policy, but who have been reviewing documents over email, video conferencing, or photo/texts for more than two years. This is a problem – perhaps a six figure fine type of problem.

In subsequent communications, DHS clarified that Form I-9 document flexibility applied solely to businesses operating 100% remotely. DHS stated that the flexibility did not cover businesses that had any employees physically reporting to any worksite location. Employers that arranged for staggered employee hours, rotating shifts of employees, or other combinations of hybrid and socially distanced work were required to conduct business as usual – physically touching and inspecting the documents of new hires.

For employers who have been 100% remote since March 2020 – how do we plan for the end of this flexibility policy? First, I advise employers to plan an annual I-9 self audit that involves taking inventory of the active employee population and determining how many current employees were hired under the "flexibility" policy. If the employer has a return-to-work date in place, consider whether the business has sufficient HR capacity to complete the tactile document inspection within three business days for those returning to work. If the number of remote verified employees exceeds HR's capacity for paperwork, consider staggering starts so that HR has sufficient time to meet with each person within three days of the return to work. Prepare employees for this return to work by reminding them that they will need to meet with HR to present the same I-9 documents that they originally presented, in person. Consider using sign-ups, HR fairs, or designated appointments to ensure all I-9s are completed.

For employers that were not covered by the flexibility policy, but conducted remote document inspection – what can be done?

Businesses of all sizes can work towards complete I-9 compliance. It starts with a self-audit of the company's I-9 records, a best practice that should be repeated annually. Begin by ensuring that your business has an I-9 for all active employees – no matter whether they work in-person or remotely. Identify the I-9s that were completed with remote document inspection and make a plan to meet with the impacted employees as soon as possible to execute a new Form I-9. (The new Form I-9 should be stapled on top of the prior form to show that it was corrected.) Examine all company I-9s to determine whether they contain obvious errors or omissions such as incomplete sections, unsigned forms, or missing start dates. Many minor errors, called "technical violations," can be corrected during a self-audit. More significant errors, called "substantive violations," will require the employer to execute a new I-9.

Businesses that may need assistance in assessing their I-9 compliance and remediating larger non-compliance problems should seek business immigration legal counsel.

For more information, contact Katie Jacob at katie.jacob@dinsmore.com or 513-977-8591.

[1] Employer Solutions Staffing Group II, LLC's fine was ultimately set aside by the Fifth Circuit Court of Appeals on the basis that the statutory text of the Immigration and Nationality Act and the Form I-9 instructions were vague as to whether an employer is making a "personal attestation" or "corporate attestation." Since that time, the Form I-9 instructions have been revised to explicitly state that the person reviewing the identity and work authorization documents must be the same person who completes and signs Section 2 of the Form I-9. See *Emplr. Sols. Staffing Grp. II, L.L.C. v. Office of the Chief Admin. Hearing Officer*, 833 F.3d 480 (5th Cir. 2016).

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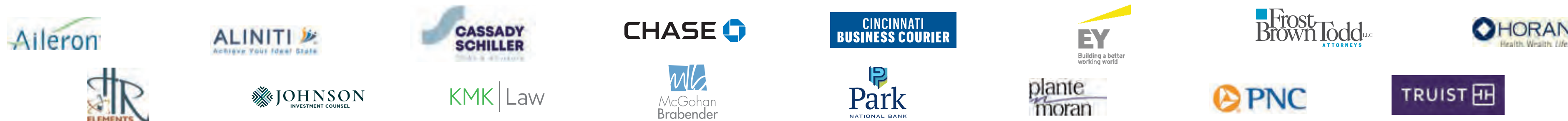

Ongoing Employee Education is Crucial to Success

By Laura A Ratliff, Account Manager for Key@Work, KeyBank

Today's tight labor markets require new and innovative ways to keep staff loyal to their business. It's how companies remain competitive, while building a skilled and motivated staff. According to a study by Deloitte, 83% of executives identified training and development as important or very important. This stems from the growth of the "gig" economy – freelancing and outsourcing, and the reduction in lifetime employment. Their personnel need and want more employee education and training that will build specific skills. Although it may not initially seem like it, this is good news for you as a business owner. The more flexible and open you and your employees are, the better your company will be at taking advantage of shifts in the marketplace or weathering short-term industry downturns.

Ratliff

OPTIONS FOR EDUCATION AND TRAINING

With emerging technology, there are countless ways you can provide training for your employees:

- In-house seminars and courses
- Online resources
- Purchase specific programs or buy a company subscription from online training providers such as Coursera or LinkedIn's Lynda®
- Send employees to off-site job or project-specific training

The benefits of ongoing education and training stretch far and wide for business owners. Employees who are well informed can speak knowledgeably about what your company offers and how it supports its customers. This could also allow them to understand and follow processes and procedures better. Plus, oftentimes they feel more empowered.

For the training or education to be effective, employees must retain and use the information. So, the training you provide or sponsor must have a practical on-the-job component. Knowing that they need to report on what they learn will encourage your employees to focus and get the most from the training.

Taking time to focus on employee development can translate to higher employee engagement, stronger morale and greater job satisfaction. Employees who enjoy their workplace often need more than a 5-10% increase in pay to be lured away. Combined with an employee recruitment incentive program – this can significantly decrease recruitment and acquisition costs.

FINANCIAL EDUCATION CAN BREED POSITIVE OUTCOMES

Financial wellness training can be beneficial to both your employees and your business. It can include providing advice on budgeting, money management, saving, and general tax information that can help reduce the financial stress in your employees' lives.

Most generally, small businesses do not provide retirement benefits. Thus, employees will need to rely on their IRAs, along with social security, to fund their retirement. By offering financial wellness education, those who are approaching retirement age may feel less concerned about their financial post-retirement well-being. They may also be more willing to pass on knowledge to others than those who are highly fearful of losing their jobs because of the adverse impact it would have on their financial situation.

Do you have employees whose wages are being garnished for any reason? Do you provide loans to any of your employees? If the answer is yes to either of these questions, periodic financial wellness training can help alleviate any problems they may encounter. It can serve as both a prevention tool and empowerment resource to augment all employees' financial health. Learning new concepts, processes, and methods contributes to their professional growth. Your commitment to their growth and well-being will be rewarded through higher engagement, enhanced creativity, higher productivity, and lower turnover.

Laura A Ratliff is an Account Manager for Key@Work in Southwestern and Central Ohio. She can be reached at 216-813-3649 and laura_a_ratliff@keybank.com.

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