



MAKING NEW YEAR'S RESOLUTIONS WORK

BY DAWN M. IACONIS, MA
C-SEAP COUNSELOR

For many people, the coming of the new year brings attention to those things we would like to do or change and the burst of motivation to make "this year the year!" In January we make vows to ourselves to lose ten pounds, improve our family relationship, perform better at work, get the promotion and finally get our finances in order. Looking ahead and setting goals for health and fitness, career and family are useful and positive endeavors. Unfortunately, New Year's resolutions are frequently short-lived, forgotten or leave us with more of a sense of failure than accomplishment. We really wanted to meet our goal but it "just didn't happen" and often we blame ourselves for not sticking to it.

Frequently, however, it is not our lack of "will power" that stops us from attaining our goals – it is the type of goals we chose and the way we go about setting them. A significant body of research in the business, sports and mental health fields suggests that specific approaches to goal-setting improve overall performance and even partial attainment of goals improves confidence. Changing the way goals are set and worked on can be more effective in making New Year's resolutions work than simply counting on the usually short-lived January motivational surge. Considering this information and using the following steps may help you to make better resolutions and make them work.

1. Choose the Right Resolution

Many resolutions are likely to fail because they are not the right one or are made for the wrong reason. It is important to give some thought to the questions of what goal is being set and why. Change is more likely to happen when it is consistent with something that is highly personally valued, as distinct from something one thinks one "should" do because it's a popular idea among friends or relatives or in the media. Identifying why a specific change is desired can help prevent setting goals that are, ultimately, not important enough to sustain your interest past January.

For example, health and fitness are frequently named as the top categories of New Year's resolutions with weight loss being the most common. It is helpful to ask why

weight loss is important to you at this time in your life (not just why weight loss is a good idea in principle).

What are the benefits of weight loss to you? Improved health? Increased energy? Attractiveness? Because your mate wants a more slender you? Identify what you may have to give up and consider if it is worth it. Weight loss may require getting up earlier to exercise daily or preparing food at home more often. If the potential benefit isn't valuable enough to you to make those tradeoffs tolerable, it is not the right goal – it won't be sustainable.

2. Choose a Goal That Is Challenging But Attainable

Optimal performance is achieved in part by setting goals that are challenging but not so difficult that they are frustrating and demoralizing. If you don't believe your goal is attainable, you are not likely to even try to meet it. In order to identify how attainable a goal is, the possible obstacles need to be identified. How difficult will it be to be successful? Is it realistic? Seeking assistance is always appropriate when you need help. Smoking cessation programs, weight loss groups and 12-step programs offer assistance that can be invaluable. Be careful, however, not to choose a goal that requires change on the part of another who may not share your goal or motivation.

3. Be Specific

Many resolutions fail because they are too general and too vague. A resolution "to cut departmental expenses by 10%" or "to reduce destructive conflict within the team" is more effective than the goal "to be a better manager." Phrase the goal in a way that identifies exactly what the goal is and how you will know when it has been completed. Being specific makes it easier to identify what steps need to be taken in order to be successful.

4. Break it Down and Create a Plan

Once you've decided on a goal that is important to you, attainable and specific, the next step is to develop the plan for attaining it. What needs to happen in order for you to meet the goal? Even people who set specific goals sometimes fail because they don't know where to begin.

The resolution "to run a half marathon next summer" requires several steps to get there. If you currently don't exercise at all, the plan may include walking 20 minutes a day for one month to build up to running, buying running shoes and joining a training group for new runners at your local recreation center. The goal "to communicate concerns effectively without raising my voice or using sarcasm" may be accomplished by attending a training on conflict management, reading one book on negotiation and establishing monthly meetings with a supervisor to review improvements in communication. Being specific and setting time goals will help you identify when you've been successful or if you might need to make a correction in the plan.

5. Remain Flexible

Being too rigid can in itself be the reason for failure. The best plans can be adversely impacted by circumstances that are unexpected and beyond your control. Including flexibility into the plan will allow you to modify your goal or approach rather than give it up altogether. The goal might be "to improve my performance by completing projects on time" and the plan may include identifying why projects are late, discussing possible solutions with your manager and keeping a list of project requirements and due dates on your desktop. If your definition of success is based entirely on making ALL due dates, a missed date – even if due to a circumstance

beyond your control – may lead you to feel that you've failed and to give up the goal in frustration, disappointment, and demoralizing self-reproach. It is possible that once you begin working on the plan, you learn that the steps you chose are not exactly the right ones or that your plan was too aggressive. Rather than thinking of those things as failure, simply return to the goal setting steps, identify what isn't working well and make adjustments.

6. Think Incrementally and Identify Your Successes

Some "failures" are not failures at all. Remember that even partial success is still an accomplishment! If you have moved just one or two steps closer to your goal, you are still closer than you were before you began.

If you would like more information or assistance in setting and attaining professional or personal goals, please contact C-SEAP. C-SEAP provides consultation, counseling and a variety of trainings that may helpful as you develop and work towards your New Year's resolutions.

To reach us from within the Denver area call 303-866-4314. Outside the Metro area, the toll free number is 1 800-821-8154.

INFORMATION CONCERNING NEW EMPLOYER NOTICE REQUIREMENTS

Beginning January 1, 2005, state and local government employers who offer public pension plans have an obligation to notify newly hired employees of the potential reduction of future Social Security benefits. Under the provisions of the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP), Social Security benefit calculations are based on a modified formula when a worker is entitled to a pension from a job where the worker did not pay Social Security tax. As a result, these workers receive a lower Social Security benefit than if they were not entitled to the public pension.

The Social Security Protection Act of 2004 requires state and local employers to disclose the possible impact of these two provisions on employees hired into jobs not covered by Social Security on or after January 1, 2005. The notice is necessary because some public employees are not aware that their Social Security benefits are reduced based on income from their public sector pension.

To meet the notice requirement, new employees must sign a document stating they are aware of a possible

reduction in their future Social Security benefit entitlement. The Social Security Administration (SSA) recommends that new employees sign a notice form before beginning work. Form SSA-1945, "Statement Concerning Your Employment in a Job Not Covered by Social Security", has been provided for this purpose. The form, along with instructions for its use, can be found at the following address:

www.socialsecurity.gov/form1945/SSA-1945.pdf

Beginning January 1, 2005, please include form SSA-1945 (or its equivalent) in your employee orientation process. A copy of the signed form should also be sent to PERA and the original kept in the personnel file.

For Social Security publications and additional information, including information about exceptions to each provision, visit www.socialsecurity.gov.

WHAT NOT TO SAY

BETTY CRIST
CLAIM SPECIALIST

TV is rife with reality shows, make-overs and "self-help" presentations. If Risk Management were an insurance reality show, there would be two rules for "what not to say."

Rule Number 1: It was all my fault.

Rule Number 2: The State will pay for it.

The reality of liability claims filed against the state is that, while the incident may be the fault of the state, the state may NOT pay for it.

So, how can that be?

As a private individual or employee of an insured private sector business, commercial liability insurance provides protection for the person "at-fault" in an accident. The injured party or owner of damaged items files a claim with the insurance claim office and, the "check is in the mail."

In the case of the state, however, state law takes the place of an insurance policy. "Coverage" is based on "waivers of sovereign immunity" that are enumerated in the Colorado Governmental Immunity Act, as well as negligence. Sovereign immunity stems from English common law, where the king could do no wrong. Thus, if the king decided to compensate an injured party, it was due to the king's largesse.

Since the State of Colorado is self-insured for liability, the legislature determined that there would be only six areas where sovereign immunity of the state was set aside, or "waived." Claimants can be reimbursed for damages that fall within those waived areas when it is clear that the state was negligent and a claim has been presented in accordance with specific requirements of the Immunity Act.

A majority of the claims filed against state agencies stem from operation of a state-owned motor vehicle or other equipment. A waiver exists for operation of a state-owned or leased vehicle, but NOT for other types of equipment. Thus, claims related to operation of various types of equipment cannot be successfully presented for reimbursement, even when there is some negligence involved in the related activity.

Claimants and state employees alike often protest that the limits of the Governmental Immunity Act are unfair and that innocent parties should not have to bear the cost of their damage or injury. The fact is that they will

also bear the cost if the claim were to be paid by the state, since claims are paid from state tax money. Since the state does not have an unlimited source of money, claim limits were put in place by the legislature to protect citizens from excess taxation. State agencies or their employees sometimes think they should pay for losses from agency funds since they were instrumental in damaging the claimant. The Governmental Immunity Act does not allow this, as it clearly states that damage claims can only be paid under the terms specified in the Act. Some agencies may find a way to assist with repairs to damaged property or items, particularly when it is vital to maintain good relations with the other party or municipality, but this can be a slippery slope, so must be approached with great caution. In general, State Risk Management does not recommend it.

Remember, State Risk Management is the state's "insurance company" and is here to serve as a buffer between agencies and claimants. State Risk Management works with two contract adjusting services to investigate the claim and interface with the claimant so agencies' employees do not have to do so. If a claim is denied and the party continues to contact the agency, your proper course is to refer them back to the State Risk Management Office.

Given all this, what SHOULD an employee say to the other party when an accident happens? The reality response is simply:

Rule Number 1: Call the State Office of Risk Management to report your claim. 303-866-3848.

Rule Number 2: The same as rule number 1.

PERSONAL SERVICES PROGRAM UPDATE

BY JOI SIMPSON
PERSONAL SERVICES PROGRAM COORDINATOR

The PCP Personal Services Contracts Training has been scheduled through June of 2005. DHR offers two levels of training, Level I and Level II. Both are required for HR professionals seeking certification. The following is a brief description of the courses and class schedule.

Level I is basic training on personal services contracts. Topics include what you need to know to begin reviewing personal service contracts, the requirements for HR professionals, an overview of applicable statutes and Director's Administrative Procedures, flow charts of the personal services contract review process, and the basics for determining independent contractor status. The course lasts approximately 8 hours.

Level II is advanced training focused on the required elements of the cost comparison and completion of the cost comparison form, as well as the appropriate application of statutes and Director's Administrative Procedures. The course lasts approximately 6 hours.

All classes will be held on Wednesday in the Centennial Building, 1313 Sherman Street, in Denver.

LEVEL I

Start time 8:30 a.m. and ends approximately 4:30 p.m.

February 23, 2005

April 27, 2005

June 15, 2005

LEVEL II

Start time 9:00 a.m. and ends approximately 3:00 p.m.

March 30, 2005 - Room 220

May 25, 2005 - Room 318

Please contact Judi Karg at judi.karg@state.co.us or 303-866-2391 to reserve a space. Seats are limited and will be reserved on a first come, first served basis.

CERTIFICATION FOR PERSONAL SERVICES AGREEMENTS FORM UPDATE

As part of the statewide waiver pilot process, the Pilot Forum (Forum) identified issues with the Certification for Personal Services Modification form (short form). Based on comments from the HR and contracting community, the short form was altered to make it more user friendly. However, upon further discussion, the Forum and DHR staff determined that the short form created more confusion at the department level and within the contract routing process. Therefore, we determined that it would be more effective to add a section on the Certification for Personal Services Agreements (long form) that identifies a contract as an amendment or modification. This means that the self certification feature is no longer available nor is it necessary. To obtain the updated form please visit our web site at www.colorado.gov/dpa/dhr (under Oversight/Contracts).

A special thank you to members of the HR and contracting community for your insight and input on the changes to the form and the program.

For questions for issues please contact Joi Simpson at joi.simpson@state.co.us or 303.866.5496.

BULLETIN NEWS BRIEFS

The updated Director's Administrative Procedures reflect changes to P-4-15 and P-4-17 that were effective December 1, 2004. P-4-17 gives appointing authorities increased flexibility in filling multiple vacancies. Technical assistance is available on the web site. For more information call Joe Czajka 303-866-4020.

The Division of Human Resources Total Compensation Unit will present the two-day personnel certification course (PCP) in Job Evaluation and Compensation on March 7 and 9, 2005, in Denver. The class will begin at 9:00 a.m. on Monday, March 7th and will be held in

Room 220 in the Centennial Building at 1313 Sherman St. The course will continue on Wednesday, March 9th and finish by 3:00 p.m. Call or email Judi Karg at 303-866-2391 or judi.karg@state.co.us to reserve a seat in the class. Other questions about the course should be referred to Don Fowler at 303-866-4250 or don.fowler@state.co.us.

To learn more about these and other human resources, risk management, benefits, and C-SEAP policies and issues, go to www.colorado.gov/dpa/dhr ("Recent News").

FMLA CORNER

BY JERRY WITTMER
FMLA COORDINATOR

Please share this information with FMLA Coordinators, payroll/benefits staff, and any others who work with the FMLA.

STAFFING ANNOUNCEMENT

Laurie Benallo has taken a new job assignment in the Division of Human Resources, DPA and is no longer the primary contact for FMLA and leave policy questions and issues. Jerry Wittmer, formerly of the Departments of Revenue and Transportation, has taken over responsibility for coordination and implementation of FMLA and leave in the state system. Please welcome Jerry to his new role and direct your FMLA and leave questions and concerns to him. Jerry's direct telephone number is 303-866-2523 and e-mail is jerry.wittmer@state.co.us.

USERRA AND FMLA

With large numbers of workers currently involved in military service through the various federal uniformed services, as well as reserve and National Guard units, the Uniformed Services Employment and Reemployment Rights Act (USERRA) has imposed affirmative obligations on employers, both public and private, to provide employees with leave and certain protections in order to serve. These protections extend to federal statutes such as the Family Medical Leave Act (FMLA). A specific issue concerning eligibility for FMLA protections arises from the intersection of these two federal acts.

Question: Probationary employee called to duty – 1-year FMLA eligibility requirement

An employee who has been on the job for six months with the State is called to uniformed duty and serves for one year. After returning to the job for two months, the employee requests FMLA related leave. Since this employee has not been with the State the required one year, is the employee entitled to FMLA protected leave?

Answer: Yes. The federal statute protecting uniformed service members requires that persons who are reemployed under its provisions be given credit in calculating FMLA eligibility for periods that they would have been employed but for the protected service. To satisfy the one-year eligibility requirement, the time worked (eight months) and the time performing military service (12 months) are applied against the eligibility requirement. In this example, the employee would have one year and eight months of time, which satisfies the one-year FMLA eligibility requirement. (Also, see the Division of Human Resources Technical Assistance web

site, <http://www.colorado.gov/dpa/dhr/>, the FMLA link, under the Eligibility heading.)

To summarize, a section of the USERRA regulations states that “a reemployed service member would be eligible for FMLA leave if the number of months and the number of hours of work for which the service member was employed by the civil employer, together with the number of months and number of hours of work for which the service member would have been employed by the civilian employer during the period of military service, meet [the] FMLA’s eligibility requirements.”

ON THE LEGAL FRONT – EMPLOYEE NOTIFICATION

Bones v. Honeywell International Inc., 10th Cir, No. 02-3378, April 23, 2004. Bones claimed that her termination was related to her request for FML and that Honeywell interfered with her FMLA rights.

Facts

Although the employee admitted that her tendonitis started eight years ago with an injury at her home, she reported a work-related tendonitis injury to her supervisor. Noting that the injury was not occupational, the in-house physician provided a note outlining work restrictions and accommodations, which the employer provided. The employee had a history of tardiness/absenteeism and had been warned on several occasions that she could be terminated for continued tardiness/absenteeism. The employee continued to take leave without informing the employer, and on one occasion, sent her boyfriend to the employer with leave of absence forms, but without an explanation that it was related to the injury on the job. The employee was subsequently terminated for failure to report to work and not telephoning her supervisor; she was deemed to have abandoned her job. The employer said that she had not complied with the policy on reporting absences.

Decision

The 10th Circuit Court of Appeals (covers Colorado) found for the employer and stated that the employee did not give proper notice to Honeywell of her need for FMLA leave. The 10th Circuit noted that Honeywell had met its burden to show that it had dismissed her because she had not complied with its policy, not because she had requested FMLA leave. The Court further ruled that an employee's request for FMLA leave does not shelter the employee from the obligation, which is the same as that of any other Honeywell employee, to comply with Honeywell's employment policies, including its absence policy.

Note

This case applies to the employee's necessity to meet the notification requirements and comply with the employer's policies regarding notification and reporting absences.

Horelica v. Fiserv Solutions, Tex. App., San Antonio, No. 04-03-001117-CV, Oct. 8, 2003. Horelica sued Fiserv Solutions claiming retaliation and discrimination against her for using FMLA leave.

Facts

A female employee of Fiserv Solutions saw a podiatrist for foot pain. The podiatrist recommended surgery, but the employee opted for medication instead. The employee met with her supervisor to discuss her tardiness and absenteeism. In a separate meeting with an HR person, Horelica mentioned health conditions, but gave no specific details. She did not mention the seriousness of the conditions or the amount of time it would take to resolve those conditions. After visiting the podiatrist a second time, the employee agreed to have surgery, which would require six weeks of recovery. The employee notified the HR person by phone that she would have surgery the next day and would not be in to work. She did not submit a written request for leave and did not say: 1) how much time she would be away from work, 2) the nature or seriousness of her condition, or 3) the treatment she was to receive. The employee had the successful surgery on Friday and on Wednesday of the next week (after a holiday and one vacation day), the employee attempted to call her supervisor. She left a message with her supervisor to give her a call and did not try to contact anyone at work on Thursday or Friday. On the Friday following surgery, the employee had a follow-up appointment with her surgeon and gave the surgeon FMLA papers to complete and send to Fiserv. The employee did not call work all the next week and was terminated for job abandonment the next Thursday. The surgeon faxed the FMLA papers the next day, Friday.

Decision

The District Court found for the employer and the employee appealed her case based in part on the adequacy of her notice of leave. In upholding the lower Court's decision, the Appellate Court ruled that the employee failed to inform the company of the timing and duration of her leave, telling it only that she would be out of work for one day, when she was absent for two weeks. The Appellate Court wrote that the company was not provided sufficient notice, because the employee did not meet either of the two tests of notification: 1) 30-day notice, or 2) as soon as practicable when the person knows of the need for leave. Also, the employee did not provide enough information for the company to determine if she had a serious health condition that may qualify under FMLA and that would prevent her from performing her duties at work. Therefore, the Court

reasoned that the employee was not protected under FMLA.

Note

This case applies to the employee's necessity to provide adequate information so that an employer can make a determination of the seriousness of the health condition. In this case, the Court spelled out two tests on when notification should be given and identified specifics on what should be included in the notification (i.e., seriousness, timing, duration). These two cases remind us that the employee has notification requirements.

P-5-31. Employee Requirements. The employee is to provide 30 days advance written notice, or as soon as it is practical, of the need for leave. "As soon as practical" means within two business days, if feasible, after the employee requests the leave and it may be verbal followed by written confirmation. Failure to provide timely notice when the need for leave is foreseeable, and there is no reasonable excuse, may delay the start of FML for up to 30 days after notice is received as long as it is designated as FML in a timely manner. Advance notice is not required in the case of a medical emergency. In such a case, notice may be given by any means and by an adult family member or other responsible party if the employee is unable to do so personally.

P-5-33. The employee is required to provide proper medical certification, including additional medical certificates and fitness-to-return certificates as prescribed under sick leave. Failure to provide certification in a timely manner may result in a delay of starting or continuing FML. If the required documents are never provided, the leave is not FML and the employee is covered by the other provisions of this chapter.

Hoge v. Honda of America Mfg. Inc., 6th Cir., Nos. 03-3452, 03-3477, Sept. 16, 2004.

Hoge claimed that by failing to restore her to an equivalent position on her return from FMLA leave Honda interfered with her exercise of her FMLA rights.

Facts

Honda approved FMLA leave and two extensions of FMLA leave for Hoge to recover from abdominal surgery; Hoge did not request any extension past June 26th. When she returned to work on the 27th, she expected to go back to her "door line" job that she had before she went out on leave. Honda, however, did not expect Hoge back to work on the morning of the 27th and informed her that there were no positions available, because Honda had instituted a new car model changeover. Honda did not return Hoge to work until July 31st. Hoge sued Honda alleging that the employer interfered with the exercise of her FMLA rights by making her wait until July 31st to come back to work.

Honda claimed that the delay was reasonable, because of Hoge's unexpected return and the time it took to find an equivalent position.

Decision

The lower court and the appeals court found for Hoge by citing FMLA text that says that employees returning from FMLA leave shall be entitled, on returning from such leave, to be restored by the employer to an equivalent position. The meaning is not ambiguous and does not mean in a reasonable amount of time (Honda's interpretation) after the employee is able to return to work. A reasonable delay in restoring an employee after he or she has provided notice of his or her return to work would force the employee to take more FMLA leave than is required.

The appeals court also ruled that an employer is entitled to be given adequate notice of when an employee on FMLA leave intends to return to work. The FMLA regulations state that if an employee intends to return to work earlier than anticipated, the employee shall give the employer two business day's notice where feasible. Therefore, the court ruled that Hoge did not give adequate notification for returning on the 27th, but upon learning on the 27th of her intent to return, Honda

should have restored her to an equivalent position by the 29th (two business days after Honda learned of her intent to return).

The court found Honda liable for compensatory damages (e.g., salary, benefits), but did not award Hoge damages for fees and expenses. In denying damages for fees and expenses, the court reasoned that Honda's omission was in good faith and that Honda had reasonable grounds for believing the omission was not a violation of the FMLA.

Note

This case applies to the employer's requirement to restore employees returning from FMLA leave to their old or equivalent positions in a timely manner, that is, within two business days of learning that the employee is ready to return. Also, this case points out the necessity for employees to give employers adequate notice of their intentions to return to work; failure to do so may result in further delays in returning to work.

If you have any questions, please contact Jerry Wittmer at 303-866-2523 or jerry.wittmer@state.co.us.

Course Schedule

2004 – 2005

SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY
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COLORADO SUPERVISORY CERTIFICATE PROGRAM								\$725.00
		Denver November 2,4,9,16,23		Denver January 2005 10-14			Denver April 5,12,19,26 & May 3	

COLORADO LEADERSHIP DEVELOPMENT PROGRAM								\$725.00
	Denver October 5,12,19,21,26							Denver May 10,17,24,26,31

THE RULES FOR SUPERVISORS AND MANAGERS								\$150.00
	Denver October 13	Denver November 3		Denver January 18	Denver February 2		Denver April 6	

PROGRESSIVE DISCIPLINE								\$150.00
	Denver October 14	Denver November 19		Denver January 25	Denver February 9		Denver April 7	

COLORADO STATE MEDIATION PROGRAM								\$725.00
					Denver February 3,4,10,11,18		Denver April 14,15,21,22,29	

COLORADO CONTRACTS MANAGEMENT								\$25.00
						Denver March 25		Denver May 5

EMPLOYMENT LAW UPDATE SEMINAR								
NO COURSES CURRENTLY SCHEDULED								



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Development Center

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