In construction, HR initiatives are also highly transactional – from recruiting, onboarding, and administering benefits and leave management, to spearheading compliance with myriad local, state, and federal employment regulations. Unfortunately, the volume of these transactions opens the door for costly errors.

**Significant Risks & Costs of HR Errors**

When HR mistakes occur, employees tend to share their negative experiences with co-workers. These errors can also affect executive leadership’s trust in HR, especially when a check has to be written to cover a mistake or pay for a penalty.

Similar to mistakes that occur on a construction project, HR errors can sometimes be obvious and rectified with little time and minimum cost. However, in other instances, they aren’t discovered for a year or two and inevitably cost the contractor unplanned time and unbudgeted money.

The risk of such errors affects the functional areas of HR like onboarding, benefits, leave management, payroll, and terminations.

This article will identify areas in which HR mistakes are particularly costly and suggest solutions to address them.

**I-9 Forms**

Required by the *Immigration Reform and Control Act of 1986* (IRCA), As the construction industry continues to grow, with 30,000 new jobs added in December 2017 alone,¹ so does the number of human resources (HR) challenges.

HR departments are busier than ever recruiting employees in a competitive job market, retaining and developing existing talent, and creating and delivering on HR activities for existing employees.
completed I-9 forms are intended to prove an employee’s identity and eligibility to work. The form must include the employer’s certification of original documents and be completed no later than the third day of work for pay.

A contractor’s I-9 responsibilities are often delegated to a lower-level employee who lacks sufficient knowledge of strict regulatory requirements. And, since new hiring is sometimes processed in the field, I-9s may be completed by a project assistant or project manager.

Even though technology solutions for I-9s alone cannot ensure a compliant workforce, they do provide better assurance that forms are complete as required. However, many employers still continue to opt for paper forms.

Other I-9 issues include failing to secure all required documents, submitting incomplete forms, and simply not completing I-9 forms for employees. According to the U.S. Citizenship and Immigration Services (USCIS), civil penalties for failing to comply with I-9 verification requirements can range from $220 to $2,191 per occurrence.

USCIS also has an enhancement matrix where penalties can be increased for aggravating circumstances that include business size, good faith, and seriousness, among other factors. A USCIS press release in 2016 reported that a company in California was ordered to pay over $600,000 in penalties for substantive paperwork violations (note that these violations were not for undocumented workers).

**Digital Auditing to Ensure Accurate Forms**

Technology can aid in reducing exposure to errors. Companies should implement thorough annual training of all employees responsible with I-9 facilitation. Audits of I-9 forms (either self-performed or by a third party) should be conducted annually, not only to ensure forms exist for all employees, but also to confirm that they are complete, that expired work authorizations have been addressed, and that good faith effort is made to correct any errors discovered.

While a technology solution for I-9s alone may not always guarantee a compliant workforce, ensuring that employees monitor that forms are completed and formatted correctly and timely makes a significant difference.

**Employee Benefits Administration**

Benefits administration exposes both companies and employees to costly mistakes. Benefits errors can begin with new hires. Employee contracts generally indicate that eligible employees have 30 days to enroll themselves and their dependents in the company’s benefit plans. HR commits a significant error when it fails to conduct enrollments in a timely manner or cannot prove that employees have been made aware of their eligibility and available insurance options.

**Informing Employees About Coverage**

Securing a waiver or a form declining coverage from the employee for offered group insurance is vital to not only prove that the employee was made aware of available coverage, but also to establish evidence in the event the company is subject to an Affordable Care Act (ACA) penalty if the employee purchases health care through the health care exchange and uses a government subsidy or tax credit. The same level of diligence in securing waivers and declinations should be exercised during open enrollment.

Losses can also occur when employees elect a level of coverage but are subsequently charged a lesser amount than required (e.g., the employee elects and receives family coverage, but is only contributing the amount required for employee-only coverage).

While employers hope employees would come forward upon noticing such an error, those receiving direct deposit might not review their stubs often, except to confirm the accuracy of hours and net pay. The difficult question in these situations is when the error is discovered, should the employee be expected to repay the company for the employer’s error?

If these errors go undetected for months, then they can add up to thousands of dollars and create a financial hardship to the employee – not to mention, possibly prompt the employee to harbor negative feelings toward the company.

**Termination of Coverage**

The most significant exposure to loss for an employer in benefits activities comes with termination of coverage, or more accurately, the failure to terminate in a timely manner. Whether at the time of open enrollment, qualifying events, or termination of employment, HR fails its employees when coverage is not terminated at the correct time and carriers continue to maintain employees as active.

While all policies permit a limited time to seek retroactive termination and subsequent credit for terminations of coverage reported late (generally no longer than 90 days),
When HR MISTAKES occur, employees tend to SHARE THEIR NEGATIVE EXPERIENCES with co-workers. These errors can also affect executive leadership’s TRUST IN HR, especially when a check has to be written to cover a mistake or PAY FOR A PENALTY.

during the time coverage remains active, the covered individual could continue to receive benefits. Premiums paid for months in error often cannot be recovered.

Life Insurance Coverage
By far the most painful HR errors – and where the cost cannot be quantified – involve life insurance coverage. Imagine an employee completing enrollment forms for life insurance coverage for a dependent spouse or child, confirming the deduction is coming from the employee’s pay every week and then being faced with the death of that dependent. If HR has made a mistake, the employee faces not only the tragedy of the loss, but also the shock of being notified by the insurance company that there is no record of coverage for the dependent.

Evidence of deduction from the employee’s pay alone will not obligate the insurance company to make payment of a policy that the carrier will claim did not exist. The employee would have the right to file a claim under the Employee Retirement Income Security Act (ERISA) prior to taking legal action.5

However, in a situation where the HR department is at fault, employers will find themselves paying out the value of the life insurance to the employee. And, in order to make up for the employee’s tax liability for the payment, the company may even have to gross up the amount to cover the taxes.

Maintenance of Employee Insurance Records
Whether benefits are administered manually or through benefits technology solutions, reconciliations of employer records to insurance carrier records should be performed on a scheduled basis to ensure that employees are enrolled in coverage they’ve elected and eligible for and timely terminations of coverage are occurring.

Consider terminated employees. For example, take a health insurance plan that states that coverage is terminated on the last day of the month, and an employee whose last day worked was April 2. Part of your job is to log in to your health insurance carrier’s site to enroll and terminate employees. To be efficient, you choose to log all terminations at the same time during the last week of the month.

As it happens, this is the only termination this month, and you forget to log it – in fact, it is missed altogether and the former employee remains on your insurance coverage for three months until you run a report of active, covered employees from your human resource information system (HRIS)/payroll system to compare to the insurance company’s report, leaving your company paying for 90 days of insurance for an employee who no longer works there.

If your insurance company permits 60-day retroactive terminations, your company may be fortunate enough to only owe payment for one-month coverage – for which it receives no employee contribution. Neither systems nor processes are infallible, and it is critical to implement reconciliations at least quarterly.

EMPLOYEE BENEFITS ADMINISTRATION: COSTLY PENALTIES
Benefits administration must also adhere to reporting obligations that, if overlooked, could result in costly penalties. For most fully-insured group benefit plans with 100 or more participants,6 5500 forms are required to be filed with the Employee Benefit Security Administration (EBSA) by the last day of the seventh month following the end of the plan year, or two and a half months later if an extension is requested (July 31 for calendar-year plans; October 15 if extended).7

While the form is filed with the EBSA, it is also shared with the IRS. The result is that both the DOL and the IRS can issue penalties for late or unfiled 5500 forms. The fine from the DOL can reach $1,100 per day with no maximum penalty, while the IRS can impose a penalty of $25 per day up to a maximum of $15,000.8

Timely Audit Procedures
Compliant and accurate benefits administration requires demonstrated knowledge of benefit regulations, processes that are
designed to enhance the accuracy of enrollments and terminations, and timely audit procedures that will identify errors in a systematic manner.

Employers could consider eligibility audits where employees are asked to provide evidence that dependents who are enrolled are eligible for coverage. Audits can also be used upon completion of open enrollment to establish that employee elections align with insurer records. This may be of significant value for life insurance where life insurance companies allow employers to self-bill, reporting only the number of lives and total volume of coverage.

**Leave Management**

Managing leave programs in any company is a challenge, but more so for contractors. Companies may maintain different leave policies for different classes of employees. It may also be necessary to amend leave policies to meet local and state regulations. Federal contractors have paid sick leave requirements.

Regulations and policies aside, the biggest challenges to HR in leave management may come from those outside of HR. For example, supervisors who manage by exception sometimes grant paid time off to employees but report the time as hours worked. While there are multiple implications to this practice, the significance includes setting a precedent for a new, enhanced policy by practice and creating an overtime obligation for coding time off as hours worked.

Leave management risks also occur with requests for family medical leave (FML). Uninformed superintendents may be asked by field employees for leave related to an individual’s serious health condition or that of a spouse, parent, or child.

The superintendent may inform the employee about the availability of paid time off but without basic knowledge of FML, may incorrectly communicate that the request cannot be accommodated. The employee could express dissatisfaction or even resign as a result.

In some situations, the employee’s plight is communicated to the state employment commission when the employee applies for unemployment benefits, and the employee may be advised of the right to file a complaint with the Equal Employment Opportunity Commission (EEOC). Even when evidence clearly indicates no wrongdoing by the employer, EEOC complaints can be costly in time and potential legal expenses.

**Preventing EEOC Complaints**

Every employee who supervises workers is, in effect, an extension of the HR department. Training on the basics of the *Family Medical Leave Act* (FMLA) – even if only to provide awareness that compels the supervisor to direct employees with these requests to HR – not only saves time and money spent defending a complaint, but may also help retain valuable employees who otherwise did not believe they could continue their employment.

**Pay Practices**

Employees are quick to take action on issues affecting their pay and HR must be focused on the risks.

**FLSA Compliance**

The *Fair Labor Standards Act* (FLSA) establishes federal law regarding minimum wage, overtime, child labor, and recordkeeping. Long-term, costly errors occur when employees are incorrectly classified as exempt and not paid for overtime worked. The Department of Labor (DOL) can audit employers routinely or based on an employee complaint. Employers are subject to a two-year lookback in the event of a misclassification and three-year lookback if the violation is deemed to be willful.

Other areas of exposure are situations in which employees may be “suffered and permitted to work” according to FLSA and not paid for the time. This could include required onboarding activities (including required safety training) that occur prior to the employee’s first official day. If the time spent in this training is not compensated, then the company may be exposed.

**HR Follow-up**

Exempt status under the FLSA is not an absolute process. With the responsibility for FLSA compliance, HR departments should routinely evaluate the actual work content of existing and newly created positions.

HR should also follow up on any concerns or complaints communicated by employees and prioritize the prevention of internal complaints becoming DOL audits.

**Terminations**

Whether a termination is voluntary or involuntary, missteps can be costly. Deductions from final pay for non-exempt employees are regulated by the FLSA and may be regulated by state law.
In many states, deductions for employer-issued items that are not returned can only be deducted with written employee authorization and only where the amount per item is specified. This documentation should be secured at the time of hire and in every instance an employee is issued employer property. Couple that with the fact that the FLSA will only permit these types of deductions to the point that they do not reduce the employee’s pay below minimum wage, and employers may not be able to recover all of their costs.

**COBRA Compliance**

While the timely termination of benefits was previously discussed, compliance with the *Consolidated Omnibus Budget Reconciliation Act* (COBRA) is also critical.

Under COBRA, employers have 14 days following the date of termination (voluntary or involuntary) to notify the employee (and their covered dependents) of their right to continue coverage. Failing to provide notification can result in a penalty of $110 per day.

Employers who fail to provide notice, and those who fail to reinstate employees who elect and subsequently pay for COBRA, could be liable for penalties to include medical expenses incurred by those employees and dependents denied their rights under COBRA (and effectively, medical coverage).

**Other Risks**

Terminations create other risks when not timely reported. It is common for an employee to be erroneously recorded as absent on an unpaid leave status for weeks before it is finally communicated that the employee was terminated.

During that time, as usually required by policy, the employee has probably remained on group benefits without making contributions for coverage and with no way for the employer to recoup the missed payments. In worst cases, these situations cross over into another month, where the company may now, by virtue of the benefits document, be required to cover the employee’s benefits through the end of the month – again, adding weeks to coverage for which the company cannot recover any cost.

**Investing in Supervisor Training**

Training supervisors on the costs and implications of incorrectly reporting absences and terminations is invaluable. Training should include the basics of the employer’s leave policies and how to direct employees to apply for FML. Supervisors should be provided guidance on the process and timing and what can, and cannot, be asked of employees regarding their need for medical-related leave. Depriving or denying employees of their rights under FMLA or violating an employee’s privacy by disclosing information can be costly mistakes.

**How Can HR Win?**

Executive leadership must recognize and support HR leaders and their functions as critical elements of business beyond administrative activities (e.g., onboarding, administering benefits, terminations). Deliberate efforts in building and developing an HR infrastructure complete with skilled and experienced talent and relevant technology strategies to manage the transactional activities that give rise to errors, should be a strategic, ongoing focus.

Contractors performing work in multiple states require HR departments that are familiar with respective state laws. Investments in periodic training (e.g., CFMA’s Annual Conference & Exhibition) for HR team members and technical resources are critical to managing the ever-changing regulatory environment.

Training of all employees with supervisory roles of HR fundamentals also ought to be a requirement as these leaders are effectively extensions of the HR function.

HR errors can result in lost money, expensive penalties, and damaged reputations. Errors chip away at credibility and reputation, not just with leadership, but with all employees. However, positive investments in people, process, and technology can make for a winning HR team.

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Endnotes

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