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However beautiful the strategy, you should occasionally look at the results.

— Winston Churchill

When **Organizational Memory** Stands in the Way

by *Vijay Govindarajan and Srikanth Srinivas* (Harvard Business Review)

Your company's organizational memory might be holding it back. Consider the following parable:

Two monks—one old and one young—were walking to a village far from their monastery. Along the way they saw a beautiful, young woman waiting at the edge of a stream, too afraid to cross. The young monk reminded himself of his vow not to touch women and continued walking. But to his amazement, the elder monk sped right past him while carrying the young woman, safely across the stream, on his back! When the old monk put her down on the other side of the stream, she thanked him with a respectful bow. The old monk, in turn, gave her a bright smile, and continued walking.

The young monk considered and reconsidered the old monk's action back at the stream. He could not stop churning. His thoughts grew angrier and angrier. Finally, hours later, he ended up shouting at the old monk, "You broke your sacred vows! You are not supposed to touch a woman! How can you forgive yourself? You should not be allowed back in the monastery!"

Surprised at his outburst, the old monk replied calmly, "I dropped her hours ago. Why are you still carrying her?"



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8 Things Remarkably Successful People Do

You probably would not be surprised to find that remarkably successful people tend to operate from the same blueprint. They share a number of habits:

1. They don't create back-up plans.

Back-up plans can help you sleep easier at night. Back-up plans can also create an easy out when times get tough. You'll work a lot harder and a lot longer if your primary plan simply has to work because there is no other option. Total commitment—without a safety net—will spur you to work harder than you ever imagined possible. If somehow the worst does happen (and the “worst” is never as bad as you think) trust that you will find a way to rebound. As long as you keep working hard and keep learning from your mistakes, you always will.

2. They do the work...

You can be good with a little effort. You can be really good with a little more effort. But you can't be great at anything—unless you put in an incredible amount of focused effort. Scratch the surface of any person with rare skills and you'll find a person who has put thousands of hours of effort into developing those skills. There are no shortcuts. There are no overnight successes. Everyone

has heard about the 10,000 hours principle but no one follows it... except remarkably successful people. So start doing the work now. Time is wasting.

3. ...and they work a lot more.

Every extremely successful entrepreneur works more hours than the average person – a lot more. They have long lists of things they want to get done. So they have to put in lots of time. Better yet, they *want* to put in lots of time. If you don't embrace a workload others would consider crazy then your goal doesn't mean that much to you – or it's not particularly difficult to achieve. Either way you won't be remarkably successful.

4. They avoid the crowds.

Conventional wisdom yields conventional results. Joining the crowd – no matter how trendy the crowd or “hot” the opportunity – is a recipe for mediocrity. Remarkably successful people habitually do what other people won't do. They go where others won't go because there's a lot less competition and a much

greater chance for success.

5. They start at the end.

Average success is often based on setting average goals. Decide what you really want: to be the best, the fastest, the cheapest, the biggest, whatever. Aim for the ultimate. Decide where you want to end up. That is your goal. Then you can work backwards and lay out every step along the way. Never start small where goals are concerned. You'll make better decisions – and find it much easier to work a lot harder – when your ultimate goal is ultimate success.

6. ... and they don't stop there.

Achieving a goal – no matter how huge – isn't the finish line for highly successful people. Achieving one huge goal just creates a launching pad for achieving another huge goal. Maybe you want to create a \$100 million business; once you do you can leverage your contacts and influence to create a charitable foundation for a cause you believe in. Then

your business and humanitarian success can create a platform for speaking, writing, and thought leadership. And on and on. The process of becoming remarkably successful in one field will give you the skills and network to be remarkably successful in many other fields. Remarkably successful people don't try to win just one race. They expect and plan to win a number of subsequent races.

7. They sell.

A number of business owners and CEOs were asked to name the one skill they felt contributed the most to their success. Each said the ability to sell. Keep in mind selling isn't manipulating, pressuring, or cajoling. Selling is explaining the logic and benefits of a decision or position. Selling is convincing other people to work with you. Selling is overcoming objections and roadblocks. Selling is the foundation of business and personal success: knowing how to negotiate, to deal with “no,” to maintain confidence and self-esteem in the face of rejection, to

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Organizational Memory

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Like the young monk, many organizations carry a heavy burden, and for far too long. The result — obsolete policies and practices, outdated assumptions and mind-sets, and underperforming products and services. This organizational memory creates biases that get embedded in planning processes, performance evaluation systems, organizational structures and human resource policies. This becomes a big burden when non-linear shifts occur.

Examples of the burden of such organizational memory include Blackberry — it could not forget about the physical keyboard when the world had moved on to touch screens, and Microsoft — it could not forget about the desktop as the key computing device when the world had moved on to mobile devices on the one hand and cloud-based services on the other.

How can established organizations be more like the elder monk — and transcend the clutches of the burden of organizational memory when there is a need to respond to non-linear shifts?

Consider how Infosys succeeded in this transformation.

Infosys initially provided only IT services. However, they noticed that their most demanding clients were frustrated by having to work simultaneously with multiple service firms, each lacking full accountability. They realized that in this frustration lay the seeds of a non-linear shift — and that they would either have to respond quickly and master the shift or become victims of it. They perceived the need for an organization that would provide management consulting services, redesign operations, and write specifications for new IT systems; then develop, test, install and maintain it; perhaps even accept responsibility for executing routine client operations such as transaction processing.

They also realized that the current organizational memory would be a burden for this new reality. So they created a parallel world with different people and distinct processes.

They focused on three key areas:

- 1. Strategy Making**
Instead of linear extrapolation from the past using rigorous data analysis, they focused on anticipating non-linear shifts by



bringing in non-traditional voices such as, for example, key clients, and youth (who would have little, if any, organizational memory).

2. Accountability


Instead of focusing on on-time, to spec, within budget delivery, they focused on disciplined experiments with the primary emphasis on learning rapidly, thus eliminating the defensiveness inherent in traditional organizations.

3. Organizational Design

Instead of optimizing the way individuals collaborate through job specifications,

work processes and organizational design, they formed special teams with a good mix of “outsiders” to challenge assumptions and bring a fresh set of skills and competencies.

All these changes helped Infosys overcome the burden of the organizational memory of a very successful IT services company, while retaining all of the essential elements that were responsible for its success. As a result of this successful transformation, Infosys grew 25-fold over the decade from 2000 to 2010 — from \$200 million to \$5 billion.

If you too sense big non-linear shifts in your markets, remember that “organizational forgetting” may be essential to meeting the challenges successfully. 


From the President's Desk »

8 Things

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communicate effectively with a wide range of people, to build long-term relationships. When you truly believe in your idea, or your company, or yourself then you don't need to have a huge ego or a huge personality. You don't need to “sell.” You just need to communicate.

8. They are never too proud.

To admit they made a mistake. To say they are sorry. To have big dreams. To admit they owe their success to others. To poke fun at themselves. To ask for help. To fail. And to try again. 

Meet **HEATHER JO DOUGLAS** » Senior Staffing Specialist, Indianapolis

South and Northwest

» How long have you been in the staffing business?

My first real job out of college was in the staffing industry so I've been in the business for two years.

» What was your first job? What do you remember most about it?

My first job ever was at Fashion Bug when I was 16 years old. I was the youngest person who worked there by forty to fifty years and no one quite knew how to take me! The other ladies I worked with always told me I was too fast, and they were sure I was going to make a mistake if I wasn't careful.

» Who was the worst boss you ever had and why?

To be honest, I've been blessed with some pretty incredible/dedicated managers. That being said, I did some work with a previous employer that involved a lot of brainstorming together. I would identify problems I saw, how I thought best to fix them, etc. and then I would literally make it from our one-on-one to my desk and my phone would beep with a company email – telling everyone about my manager's great insight and corresponding new initiative and even better — how I had kindly offered to oversee the new project, with my manager's guidance. But what can you do? On the upside though, I learned a valuable lesson about taking credit for other people's efforts and I try really, really hard never to fall into that trap.

» What motivates you each day to sell and service your clients? What is compelling

about staffing in general is not only is it a people-oriented business, it is a business of connecting people to other people. Whichever part of the system you feel most connected to (customers or candidates) you cannot help one without performing great service to the other.

» **What are some of your long-term goals?** I'm still working that out, actually, but I like the way I'm headed now. I'm working on learning/mastering as much as I can at each and every level/aspect of my position, and in this industry, so I can continue to grow. I'm hoping I can fill in my goals from there!

» **What makes Peoplelink unique, from your perspective?** Peoplelink works hard to capitalize and maintain the right business, not just whichever accounts are going to bring in \$, but which accounts are going to draw the right environment, attitude, positioning, and be the best cultural fit for us as a company.

» **What makes you successful as a Senior Staffing Specialist?** I think my only "secret" to success would be that I try to learn something new every day, do more right things than wrong things today, and do less wrong things tomorrow than I did today. I can't say it isn't a fairly accident-prone approach, but I believe in goals and successes that account for your human-ness because that part is unavoidable.

» What is the best advice you could give to other Peo-

plelink staff members? Keep pushing but pace yourself — there's a crazy-lot to do every day and you won't stand a chance if you don't run at it head on. That being said, even marathoners slow down through the occasional water stop — enjoy the laughs when they come and give yourself a little time every day to pause from the pressure to make sure you're still game to finish the race.

» What is your favorite movie?

My favorite movie... don't laugh, is called What About Bob? I think it's from the late 80's and for whatever reason I grew up on it.

Book? My favorite book depends on my mood — I dabble in everything from teen fiction (you will find every book in the Twilight series on my book shelf, I even have the original in Spanish as well), to classics, and old school mystery novels.

Drink? As for drink... if I'm hitting up Starbucks, I'm hooked on Iced Skinny Hazelnut Macchiatos at the moment. If I'm at the bar, I'll go Margarita, on the rocks, with salt, every time.

» If you could have any car you want, what would it be?

It is so pitiful it sounds made up — but I couldn't tell you the difference between one car or another. Honestly, I see "shiny," "not shiny," and I see what color it is... ooh and I can tell you I drive a Hyundai! But other than that... any car I want would have heated seats, remote start, and a working radio — after that I doubt I would notice the name attached to it.



» **What is the greatest feature about Indianapolis, IN?** Jungle Jim's! I live in Indianapolis but I grew up in Fairfield, Ohio and the only unique item that Fairfield can claim is Jungle Jim's. It's an international market, but with a fairly unique spin... if you're ever in the Cincinnati area you should go!

» How do you unwind when you're not at the office?

These days I take my gym clothes with me to the office and I fill up my water bottle and change before I leave to force myself to stop at the gym on the way home. It isn't glamorous, but 30-45 minutes of sweat after work and the stress of the day is the last thing on my mind. Chase that with a shower, a decent dinner, and a glass of wine and I'm ready to do it again the next day.

» What do people like most (least) about you?

I think it's fair to say that I don't ask for anyone to do anything that I haven't done/wouldn't do myself... so I hope that's something that people like about me — though I can't be sure. As far as what people do not like... I don't know! I can tread the line between "motivating" and "pushing" and I'm sure that doesn't always feel so great — but I try to stay on the good side of that as much as possible. 🧩

Bright Ideas

Three Elements of Great Communication, According to Aristotle *by Scott Edinger*

What makes someone a good communicator? There's no mystery here, not since Aristotle identified the three critical elements — ethos, pathos, and logos. — thousands of years ago.

Ethos is essentially your credibility — that is, the reason people should believe what you're saying. In some cases, ethos comes merely from your rank within an organization. More commonly, though, today's leaders build ethos most effectively by demonstrating technical expertise in a specific area (which helps convince people that you know what you're talking about), and by displaying strong levels of integrity and character (which convinces them that you're not going to lie to them even though, since you know more than they do, you might get away with it).


Pathos is making an emotional connection — essentially, the reason people believe that what you're saying will matter to them. Giving people your undivided attention, taking an active interest in your team members' career development, and being enthusiastic about both the organization's progress and the

individuals who enable it are ways that leaders do this well. At the end of the day, pathos has the greatest influence on followers' perception of their leader's effectiveness as a communicator.

But all the authority and empathy in the world won't really help you if people don't understand what you're talking about or how you came to your conclusions. Logos is your mode for appealing to others' sense of reason, ergo the term logic. Employing strengths in strategic thinking, problem solving, and analytical skills are how today's leaders express logical ideas in clear and compelling enough terms to influence outcomes. While some people can get by on gut feel, as Steve Jobs famously tried to convince us he did, most leaders are required to provide some kind of analysis to make clear their decisions. This is where many leaders feel on the firmest ground — when assembling and analyzing data to address organizational problems. A caveat, though — assembling facts is not the same as presenting them clearly (here talking in complete sentences helps a lot), or marshaling them expressly to demonstrate the merits of a course of

action. Facts do not speak for themselves, which is sad, since it would save so much time if they did. Effective leaders know the effort and time spent making explicit the connections they're drawing from the data to the analysis to their conclusion are well worth it.

These three elements of communication reinforce one another. You may rely heavily on data and analysis (logos)

to make a point and in so doing create a perception of expertise and authority on a topic (ethos). And while all three are necessary to excellent communication, improving your ability to do any one of them will help you become a better communicator and so a better leader. Combining them is the path to achieving the greatest success. 

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So how do we account for our success?

**By raising the bar
in staffing.**

**For more information, call Jeannine Victor at
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Hiring in Manufacturing, Service Sectors to Hit Four-Year Highs

By Theresa Minton-Eversole

Four in 10 manufacturing and service-sector employers surveyed said they would add jobs in March, according to the March 2013 Society for Human Resource Management (SHRM) Leading Indicators of National Employment (LINE) survey, released March 7.

A net of 49.1 percent of manufacturers and a net of 42.1 percent of service-sector companies surveyed said they will hire in March, as vacancies rose in both sectors.

"HR professionals in both manufacturing and services say they are adding to headcount in March," said Jennifer

Schramm, GPHR, SHRM's manager of workplace trends and forecasting. "While this is slightly below the net percentage of one year ago in manufacturing, it is a fairly substantial jump of over 17 points in services compared to last year at this time."

The LINE Employment Report examines four key areas: employers' hiring expectations, job vacancies, difficulty in recruiting top-level talent and new-hire compensation. It is based on a monthly survey of private-sector human resource professionals at more than 500 manufacturing and 500 service-sector companies.

Employment Expectations	Manufacturing	Service
In March, the hiring rate will drop slightly in manufacturing and increase sharply in services compared with March 2012.	-1.4	+17.4
Recruiting Difficulty		
In February, recruiting difficulty fell in manufacturing and rose in services compared with February 2012.	-9.0	+15.6
New-Hire Compensation		
In February, the rate of increase for new-hire compensation was down in manufacturing and up moderately in services compared with February 2012.	-1.4	+11.3

Source: SHRM Leading Indicators of National Employment (LINE), www.shrm.org/line

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Hiring in Manufacturing, Service Sectors to Hit Four-Year Highs

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Employment Expectations, Job Vacancies

“There was considerable vacancy growth in both the service and manufacturing sectors over the course of 2012,” Schramm said. “This is due in part to increased demand for labor. Alternatively, companies may be more cautious in their hiring, and vacancies are growing because positions are kept open longer while hiring managers search for the perfect [job candidate] fit.”

For the eighth consecutive month, service-sector hiring is expected to increase in March compared with March 2012. A net of 42.1 percent of service-sector companies will grow payrolls in March (50.7 percent will conduct hiring; 8.6 percent will cut jobs), the highest level in March since 2010. The service hiring index will rise by 17.4 points compared with a year ago.

Hiring will decrease slightly in the manufacturing sector, according to the latest LINE data, but nearly half of those surveyed still plan to add jobs in March. A net of 49.1 percent of manufacturers will add jobs in March (58 percent will hire; 8.9 percent will cut jobs), nearly matching a four-year high set in March 2012. The sector’s hiring index will fall in March on a year-over-year basis by 1.4 points.

LINE data compare favorably with reports from the U.S. Bureau of Labor Statistics (BLS), and the LINE employment expectations index provides an early indication of the BLS Employment Situation Report findings that cover the same time period but that are released a month later.

Salaried job openings rose in both sectors in February compared with February 2012, according to the latest LINE report. In the manufacturing sector, a net total of 29.4 percent of respondents reported increases in exempt vacancies in February, representing a 13.3-point increase from February 2012. In the service sector, a net total of 18.2 percent of respondents reported increases in exempt vacancies in February for a 9.1-point increase from February 2012.

Hourly job vacancies increased in February, too. A net total of 30.8 percent of manufacturing respondents reported that nonexempt vacancies increased in February, a 3.6-point increase from February 2012. For nonexempt service positions, a net total of 22 percent of respondents reported increased vacancies in February, a 6.2-point increase from February 2012.

Meanwhile January 2013 mass layoffs decreased by 181 from


December 2012, representing 1,328 mass layoff actions involving 134,026 workers, according to BLS seasonally adjusted data released Feb. 26, 2013. As a result, the number of associated initial claims for unemployment compensation decreased by 3,813.

The national unemployment rate was 7.9 percent in January, essentially unchanged from December 2012 and down from 8.3 percent in January 2012, according to BLS.

Recruiting Difficulty, New-Hire Compensation

A net of 8.5 percent of manufacturing respondents reported they had more difficulty with recruiting in February, which is a 9-point decline in employers’ recruitment difficulty level during February 2012. A net of 10.4 percent of service-sector HR professionals had more difficulty recruiting in February, an increase of 15.6 points from February 2012 and the highest net level of recruiting difficulty in four years for the month of February.

Similarly, the rate of increase for new-hire compensation was down in manufacturing and up in services compared with a year ago. In the manufacturing sector, a net total of 5.5 percent of respondents reported increasing new-hire compensation in February. That’s down 1.4 points from February 2012. In the service sector, a net total of 14.5 percent of companies increased new-hire compensation in February, representing an 11.3-point increase from a year ago.

Overall, LINE data show that most organizations are still keeping new-hire compensation rates flat—consistent with recent BLS findings on real average hourly earnings, which rose just 0.6 percent in January 2013 compared with January 2012. Other surveys also have projected minimal increases to salary budgets in 2013 of approximately 3 percent. 





Business Community Supports House Job Training Bill

By **Theresa Minton-Eversole (SHRM)**

The U.S. House Committee on Education and the Workforce approved legislation March 6, 2013, to reform the nation’s workforce development system. The **Supporting Knowledge and Investing in Lifelong Skills Act (H.R. 803)** was approved by a vote of 23 to 18.

“These long overdue job training reforms are vital to the strength of our workforce,” said committee Chairman Rep. John Kline, R-Minn. “Each day we delay reform, taxpayer dollars are wasted on failed programs, and workers are left stranded in unemployment.”

The bill, known as the SKILLS Act, was introduced Feb. 25 by the House Higher Education and Workforce Training Subcommittee to replace the Workforce Investment Act of 1998 (WIA), which has not been reauthorized since 2003. It would, among other things, eliminate and streamline ineffective and redundant employment and training programs and establish a workforce investment fund to serve as a single source of support for employers, workers and job seekers. The measure also would empower state governors to consolidate additional employment and training programs and services at the state level to improve administrative efficiency and further eliminate waste. State and local workforce-investment leaders would be required to outline strategies they would implement to serve at-risk youth, individuals with disabilities, veterans and other workers with unique employment challenges.

Many organizations representing the business community, including the U.S. Chamber of Commerce and the National Association of Manufacturers, applaud the reforms.

The Chamber issued the following statement: “The [SKILLS Act] would repeal many ineffective and duplicative federal training and employment programs. This consolidation, when combined with additional state and local flexibility for the delivery of these services, would allow more adults and dislocated workers to more efficiently receive the services they need to not only find a job but also stay employed. The Chamber applauds provisions of the SKILLS Act that address this problem through a reservation of funding for training based on an analysis of the job needs of the local area.”

“Improving [the workforce development system] . . . would help employers traverse [it] and enable American workers to receive the high-skilled training our country and employers so desperately need,” the National Association of Manufacturers said in a statement. “Manufacturers are pleased to see a significant effort to reform the [Workforce Investment Act] system by reducing the bureaucracy and allowing workforce training dollars to [be] focus[ed] on training.”

The bill also has been referred to the House committees on Veterans’ Affairs and Energy and Commerce, among others.

House Democrats introduced a similar bill, the **Workforce Investment Act of 2013 (H.R. 798)**, on Feb. 15, to update the federal job training legislation, which has been referred to the House Committee on Education and the Workforce.

Hard Look at Recruiting Process Can Counter Soft Labor Market Conditions

By **Joseph Coombs (SHRM)**

Savvy recruiters know that even in periods

of elevated unemployment, there are no guarantees that they’ll land the perfect candidate for their open positions. In fact, many would argue that they have to work even harder to land top talent when faced with soft labor market conditions and the disparities between the workforce skills that are available and the skills that are needed to fill available jobs.

Now it seems that job seekers are growing more critical of job availability, as well. In a random sample of 1,015 U.S. adults ages 18 and older, a **February 2013 Gallup poll** found that only 23 percent of respondents believe there are good-quality jobs available in the current economy. This is on par with the 25 percent who responded similarly in a January Gallup survey, which was the highest positive response to the question that Gallup has measured since March 2008.

The results aren’t such a surprise, given the country’s tenuous economic situation and the fact that millions of Americans have been out of work for months, despite efforts to land a job. However, the labor market is in a recovery period, and at any given time there are roughly 3.5 million job openings in the United States across a variety of industries.

The Gallup survey reveals that in addition to low demand for high-quality jobs and a workforce skills gap, there’s a major confidence issue plaguing both the employer and job-seeker sides of the labor market.

What’s the solution for recruiters trying to fill vacancies while grappling with such conditions? Focus more on promoting the “quality” points of jobs that are currently available. There is a renewed emphasis on promoting a total rewards approach to recruitment and showcasing the broader benefits of working at a particular organization, some experts contend.

Salary growth continues to be weak, indicating it’s no longer an option for most

companies to solely offer a hefty compensation package to attract new workers. So to counter the flat new-hire trends, many recruiters are placing a greater emphasis on short- and long-term incentives. For example, health care and retirement plan options, as well as career development potential, should be stressed when employers prepare offers for new or existing employees, said Laura Sejen, global practice leader for rewards at Towers Watson, in the article “**HR Salaries: Stuck in Neutral**,” featured in the December 2012 issue of HR Magazine..

Recent SHRM research demonstrates that companies are using this strategy. Nearly one-third (29 percent) of organizations are leveraging their benefits program to recruit workers, according to **one report in SHRM’s State of Employee Benefits in the Workplace survey report series**.

Thirty-one percent of respondents said they are highlighting their benefits program to recruit highly skilled workers for positions considered critical to the company’s long-term and short-term success. Of that group, employers reported they are touting health care benefits (75 percent), retirement savings and planning benefits (58 percent), and professional and career development opportunities (41 percent) to recruit top talent.

A majority of respondents also predicted that health care (75 percent), retirement savings and planning (69 percent), and professional and career development (66 percent) benefits will grow in importance as recruitment drivers during the next five years, as will flexible work options (69 percent) and family-friendly benefits (57 percent).

Considering Gallup’s survey findings and the fact that jobs are being created again, a new approach to recruitment is likely at hand. While all signs point to slow, gradual growth in the labor market and in compensation levels for the next several years, look for the competition for skilled talent to be waged and won by benefits-trend-savvy recruiters.

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Court Rules Random Alcohol Tests Do Not Violate ADA

By Roy Maurer (SHRM)

Random tests for alcohol performed on probationary employees who work in safety-sensitive positions do not violate the Americans with Disabilities Act (ADA), a district court ruled.

The U.S. District Court for the Western District of Pennsylvania dismissed the Equal Employment Opportunity Commission's (EEOC) case against U.S. Steel Corp. over random alcohol testing for new employees at a plant in western Pennsylvania.

The decision in *EEOC v. United States Steel Corp.*, No. 10-CV-1283 (W.D. Pa. Feb. 20, 2013), marks the first time that any court has addressed this issue and could serve as a reference point for employers accused of discrimination through their use of medical examinations.

"Employers can view the *U.S. Steel* decision as a very important affirmation of their right to take reasonable steps to ensure a safe workplace," said Robin Shea, a partner at employment law firm Constangy, Brooks & Smith, based in Winston-Salem, N.C.

But employers shouldn't get too carried away, she told *SHRM Online*. "I would expect the EEOC to appeal, and if it does, it is possible that the U.S. Court of Appeals for the 3rd Circuit will reverse and will choose to follow the EEOC's guidance on random alcohol testing."

Case Breakdown

The EEOC alleged that U.S. Steel's policy of randomly doing breath tests on probationary employees constituted a medical examination. The ADA limits employers' ability to subject their employees

to medical examinations or inquiries unless the challenged practice is covered by the business-necessity exception.

U.S. Steel defended the legality of its policy on random alcohol breath tests on four bases:

- The policy was job related and consistent with business necessity.
- The subregulatory guidance on which the EEOC relies deserves no judicial deference.
- The policy is part of a voluntary health and safety program negotiated with and agreed to by the employees' bargaining representative and accepted by individual workers at the outset of their employment.
- The policy is necessitated by U.S. Steel's obligations under federal safety and environmental laws and regulations.

In the court's decision, Judge Nora Barry Fischer agreed with U.S. Steel's argument that the random testing program is job related and consistent with business necessity because it allows the company to detect alcohol impairment on the job, which is a workplace hazard. "There is no question that maintaining workplace safety is a legitimate and vital business necessity," wrote Fischer. "Probationary employees charged with performing dangerous and safety-sensitive duties have to work alongside regular employees. Employees must be alert at all times. No level of intoxication is acceptable on the job in these circumstances."

Fischer noted that the legislative history on the ADA's ban on medical exams acknowledged the wisdom of existing federal regulations requiring drug and alcohol testing of bus and truck drivers, airplane pilots, flight attendants, nuclear-power-plant operators, police officers and firefighters. These are workers in positions that, if performed badly, could result in harm to others in the general public, she wrote. "Yet, there is no reason to deem the lives of those in the general public less worthy of protecting than the lives of one's co-workers. Where the guiding principle of the business-necessity exception is to permit employers to take pre-emptive steps to protect people from injury, the court sees no reason to make a distinction in the kinds of people



that such employers are allowed to protect."

EEOC Alleges Disability Discrimination

The case originated with Abigail DeSimone, who was dismissed by U.S. Steel in February 2008 after she failed a breath alcohol test shortly after she began working at the U.S. Steel coke plant in Clairton, Pa.

According to court documents, the company has been conducting random drug and alcohol tests of its probationary employees at the plant since 2006, in accordance with the terms of its labor agreements with the United Steelworkers union.

"The fact that there was a negotiated agreement between U.S. Steel and the union is not lost on the court, as it further highlights the consensus by all parties involved that such testing was consistent with maintaining workplace safety," Fischer stated.

DeSimone said the test registered a false positive because she has diabetes.

In addition, DeSimone had told the nurse who administered the test that she had not ingested any alcohol but that she was diabetic and so she needed an alternative test. The nurse denied her request. Later that day, DeSimone obtained a blood alcohol test from her physician, which came back negative. This test result was faxed to the employer.

Even though U.S. Steel did not have an objective belief that DeSimone was under the influence of alcohol when tested at the plant, it discharged her for a violation of the corporate alcohol policy.

In September 2010 the EEOC sued U.S. Steel, alleging that the test violated the ADA.

DeSimone settled privately with U.S. Steel

in March 2012, but the EEOC continued to pursue its claims against the company's practices.

It's not surprising that the EEOC went after U.S. Steel and the union, said Shea. The ADA has a specific exemption that allows testing and discipline or discharge for the current use of illegal drugs, but the exemption does not apply to alcohol—even alcohol abuse, she added.

Employers' Takeaway

If you are an employer in a heavy or hazardous industry, keep an eye on this case, advised Shea. "Until the case is resolved on appeal, it's probably wise to continue complying with the EEOC's guidance. But this is a big preliminary win for employers in heavy industry," she said.

Another reason employers should be cautious is the extremely dangerous nature of the work performed at the coke plant at issue in this case, Shea said. "Even a court that agreed with U.S. Steel might find that the employer interest in ensuring safety was not as compelling in a 'lighter' work environment, such as an office or restaurant, or even a lighter manufacturing environment."

However, the court's decision should provide a measure of relief to employers sparring with the EEOC over allegations that alcohol and drug testing violates the ADA. "Contrary to popular belief, the EEOC is not infallible," Shea observed. "The agency's interpretations must be reasonable based on the language of the governing statute. If they're not, then a court and, ultimately, an employer can choose not to follow them."