



## Resolve To Be A Better Manager

By Tillman Coffey (Atlanta)

With every new year, millions of people resolve to make positive changes in their personal lives. Some even resolve to change how they “roll” at work. For owners, managers and supervisors, the fresh-start aura associated with the beginning of every new year is the perfect backdrop for making positive changes that may help them become better, more effective, and respected leaders.

If you are interested in making a few small changes that could have a major impact on you and others, below are a number of simple resolutions for your consideration. Don’t worry, the list doesn’t include diets or exercise.

### Follow The Golden Rule

Simply stated, always treat your employees the way you want to be treated, a concept most of us learned as children. No one enjoys being ridiculed, embarrassed, humiliated, unappreciated, abused, or bullied by their bosses, nor would they want the most important person in their lives to be subjected to treatment of this kind. Relatively few employees respond positively to a management style that includes such tactics.

Given these realities, why would anyone manage others this way? It’s funny how we readily see the problems with this management style when it’s others using it or we are the “victims.” If your employees could legitimately consider themselves to be your “victims” in this regard, step back and consider a different, perhaps kinder and gentler approach. Treating your employees the way you want to be treated should pay immediate and lasting dividends, even in a bad economy.

### Say “Thank You”

How can something so simple be so hard and rare? You learned as a child to say “please” and “thank you.” These basic manners are as relevant and important now as they were when you first learned them. Who doesn’t want to hear “thank you” or know that their efforts are appreciated? You do, right? So do your employees. No matter how much money they make or what benefits they have, most employees want to know that someone recognizes their contributions on a personal level.

Simply saying “thank you” with words or with words accompanied by actions (e.g., donuts, lunch, announcement, ceremony) almost always produces a greater return to the manager and to the company. Employees who feel that their manager (who usually is “The Company” to them) appreciates their efforts usually are more loyal and more willing to go that extra mile if needed. And, employees who feel appreciated are less likely to be problem employees, more likely to show up for work as scheduled and do their jobs, and are more likely to bring their concerns, when they have them, to their manager rather than a third party.

### Get To Know Your Employees

No, not in an inappropriate way but in a way that lets your employees know that you are interested in them as people. Managers who create a connection with their employees often are more successful on many levels and often have better, more loyal employees. One way to create that

connection is to know some basic personal information about your employees, that surprisingly many managers don’t take time to learn.

For example, knowing your employees’ first and last names, their significant others’ names, their children’s names, and maybe some of their outside interests indicates that you see them as people and not just as workers. Knowing this basic information allows you to have a safe personal conversation about something important to your employees and may create a connection and a sense of loyalty that may otherwise be missing. Your employees will take notice and should respond positively.

### Keep The Door Open

There are times when almost every employee has concerns and needs to talk to someone about those concerns. The person could be you or, alternatively, someone who doesn’t have everyone’s (yours and the company’s) best interest in mind. Don’t you want a workplace environment in which your employees come to you first and give you the opportunity to address their concerns? Of course you do. The fact that your handbook has an “open door” policy doesn’t ensure you will get that opportunity. Your words, actions, and track record in dealing with employee issues are likely more important than the words of the policy.

If you have not discouraged your employees from bringing their concerns to you and you have demonstrated a willingness to listen and take appropriate action, your employees likely will give you that first opportunity. On the other hand, if you have implicitly or explicitly communicated or demonstrated to your employees that complaining to you or anyone else in the company may put their jobs in jeopardy or that complaining is a waste of time, you may be creating serious risks and problems for your employer and you personally. The investment of time it takes to do the right thing is microscopic compared to the time it will take to address problems created by a short-sighted approach of discouraging internal problem solving.

### Ask For Help

No one knows or is expected to know all the answers to employee questions or the best way to address all employee problems and concerns. The key is knowing what you don’t know and learning whom to ask. As Clint Eastwood famously said, we all have to know our limitations. There are layers of laws and regulations governing the employer-employee relationship and they are constantly changing. Additionally, your company likely has numerous rules, policies, and procedures, with the proper application of each likely dependent upon the unique circumstances of the situation. Staying abreast of all this information in addition to performing your primary job duties is difficult, if not impossible.

But the degree of difficulty is not a pass to ad lib. The risk of bigger problems is too significant for you to be guessing about what to do. Likewise, adopting a strategy of asking for forgiveness instead of permission so that you don’t run the risk of being told that you can’t do what you want to do carries significant risks. And, the risks are too high to let your ego prevent you from asking for help. There is no shame in not knowing all the answers. There is shame in not asking for help when you don’t. Knowing your limitations and asking for help demonstrates strength, not weakness.

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### Follow The Rules

You must set the example for your employees, and they expect you to. Your words and actions likely have more impact on your employees' compliance with rules and standards than anything else. Simply put, your employees take their lead from you. If you ignore and violate the policies, rules, and procedures, you are signaling to your employees and perhaps to the world that these policies, *etc.*, are not important to you and, in turn, the company, but are simply window dressing.

The results are predictable. If you tell your employees to get to work on time but you are always late, your message is hollow. If you (or the handbook) instruct your employees to refrain from engaging in various types of conduct, harassment for example, but you engage in that very conduct, what's the message you're sending to your employees or to any third party who may become involved? Managers who ignore the conduct rules often create legal problems for themselves and their employers. Many employee legal claims are based on a manager's conduct that is, in almost all cases, contrary to company policy. Leading by example and following the rules are two of the most important things a manager can do.

### Enforce The Rules

Most experienced managers realize that their employees expect and want them to enforce the rules and standards even if the manager has to take disciplinary action against those employees who are not doing what they are supposed to do. Most employees do their jobs and expect their co-workers to do theirs. When managers don't enforce the rules, they often lose the respect of the good employees who follow the rules. A manager's failure to enforce the rules has the effect of lowering acceptable standards for everyone and creating risks for discrimination claims.

For example, if the posted starting time is 8:00 but one or more employees regularly arrive late with no consequences, the new starting time is the latest time you allow any employee to start work without negative consequences. In other words, the lowest level of performance you accept becomes the standard for everyone doing that job. If you attempt to enforce different standards for employees doing the same job, your actions may give rise to claims of discrimination. Moreover, managers who fail to act for fear of creating a legal problem or because they do not know what to do often create the very problems they were trying to avoid.

### Reset Expectations

If you have been lax in enforcing the rules and standards but want to make a change, you can and should do so now. The beginning of the new year provides the perfect backdrop for pushing the reset button. Simply meet with all your affected employees and explain the "new world order" to them, which may only be a return to some prior standard that has not been enforced recently. You can tell your employees that you accept responsibility for the lax enforcement in the past and, as such, everyone has a clean slate. But going forward on a date certain, the expectations will be different. Document the meeting and consistently enforce the new/old standard after the "change" becomes effective.

### Be Consistent

Employees want and expect to be treated in a consistent manner when the circumstances are the same or similar. Employees also want to know what is expected and acceptable. Knowing the parameters of expectations is comforting to employees and helps everyone achieve the ultimate goals. If everyone understands that 8:00 really means 8:00, then most employees will be there. Consistent treatment of employees also helps lower the risk of discrimination claims, the vast majority of which are brought when employees in similar situations are treated differently. Consistency establishes expectations and acceptable behavior.

### Document Your Actions

Almost everyone has heard: document, document, document. Still many fail to do so. This common failure is often attributable to a personal lack of time or uncertainty about how to do it. It's often said that if it is not in writing, it didn't happen. In most cases it did happen but the lack of documentation reduces the situation to a credibility contest between the manager and the employee. That credibility determination may be made by persons more aligned with your employees than you and the company.

Taking the time to document conversations, disciplinary actions, and expectations at the time the events occur is usually the company's and your best evidence in the unemployment compensation arena and in a variety of other forums. The existence or absence of proper documentation often is the difference when challenges arise. Moreover, documenting your expectations and the possible consequences if they are not met signals to your employees that the matter is serious and changes are expected.

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# Intern + Output = Paycheck

By Shayna H. Balch (Phoenix)

It's no secret that today's economy is tough. The result? Business vets are joining this year's crop of students as fall interns. They will work away – often for free – in hopes of a future job, a resumé builder and even to sample "the real world."

There is just one problem – in many cases, this is illegal. Just last year the Labor Department issued a very specific crackdown regarding unpaid employees – a six-point checklist on just how far an internship can go before requiring a business to pay up by at least offering minimum wage. The six criteria a business *must meet* in order to allow unpaid internships are:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer derives no immediate advantage from the activities of the intern – and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If an internship does not meet all of the above areas, the "intern" needs to be paid at least minimum wage as well as overtime as appropriate. In addition, a true internship should always be offered for a specific, defined time frame – and should never promise potential future work.

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# 2011 Index Of Newsletter Articles

For those of you interested in articles that appeared in the Labor Letter throughout the year, here is a list of their titles, authors, and dates. All are available on our website at [www.laborlawyers.com](http://www.laborlawyers.com).

Title	Author	Date
A Down Economy - An Increase In Hiring Dangers	Grace Horoupian and Matthew Sgnilek	November
A Successful Employment Relationship Starts With A Good Interview	Michelle Anderson	March
Arbitration Can Save Time And Money	James R. Holland	May
Do Your Job Descriptions Still Fit?	Tillman Coffey	June
Employee Or Independent Contractor: One Way Of Thinking It Through	John McLachlan	November
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Fisher & Phillips Files Comment On NLRB Proposed Ruling		July
Hitting The Reset Button At Work	Tillman Coffey	July
Hurricane Irene Leaves Wage/Hour Questions In Her Wake	John Thompson	October
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Immigration Enforcement Continues To Target Employers, Part II	Kim Thompson	February
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Managing Workers' Compensation Costs	James R. Holland	October
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March Mayhem Bracket For Employers: Final Four Revealed	Rich Meneghello	April
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Pros And Cons Of Severance Agreements	Rich Meneghello	December
Seven (Sometimes Surprising) Facts About Mediation	Jennifer Achtert	April
That Little Smart Phone Might Cause A Big Wage And Hour Headache	David Monks	October
The Calm Before The Storm? An Employment Law Preview Of The 2011-12 Supreme Court Term	Rich Meneghello	November
The Labor Board Is Giving Employees More Rights To Complain	D. Albert Brannen	July
Tips For Protecting Your Workers From The Cold	Edwin Foulke	December
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Two And A Half Lawsuits - Lessons Learned From The Charlie Sheen Litigation	Tamara Devitt	September
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Writing An Employee Handbook Your Employees Will Read - And Heed, Part I	D. Albert Brannen	March
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Year-End Look Back - The Lowlights	Michael S. Mitchell	December

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### No Retaliation

The law protects employees who make good faith complaints about discrimination, harassment, their pay, and safety issues, among other things. Retaliation is a natural reaction when someone believes they have been falsely accused of something. Don't let your emotions rule the day.

An employee who alleges discrimination and retaliation may lose the discrimination claim but prevail on the retaliation claim if it appears that the company took action against the employee for making a good faith complaint. Before taking action against someone who has made a complaint, take a deep breath and ask for help from someone with no emotional involvement.

### Think Before Sending Emails And Text Messages

Emails and text messages have taken the place of face-to-face and many telephone conversations. With all the benefits of this technology, managers must be mindful that these communication methods can create the most damaging "smoking gun" evidence in an employee dispute. As technology becomes more and more a part of everyday life, managers tend to relax and say things in emails and text messages that they would never say to someone's face or would never say if they knew others would find out about it.

Unfortunately, many forget, don't realize, or simply are not thinking when they send an electronic message that will reside on someone's hard drive, if not in hard copy, long after it was sent. For this reason, before sending any email or text message or similar type communication, ask yourself 'would I want this email or text to appear on the front page of the newspaper or to become part of a news story' or 'would I want my mother or significant other to read it.' If not, hit delete.

These tips are not earth shattering and should not be new to anyone reading them. Nevertheless, these rather simple and common sense suggestions should help you start the new year on a very positive note. Hopefully, your employees will not be suspicious if the New Year brings a New You.

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## Intern + Output = Paycheck

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In the past, this hope for future work has kept interns from complaining of no pay – and kept employers from getting what amounts to free labor. This is not the case any longer. Since the release of the internship criteria, the DOL has cracked down on what qualifies as employment versus as internship in the strictest of senses.

What can really happen to a business caught not paying its interns? You'll face legal exposure both from the government and a potential lawsuit. Penalties can include owing back pay, taxes not withheld, Social Security, unemployment benefits, interest, attorneys' fees and liquidated damages (double the unpaid wages).

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