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MASTER CLASS

SOCIAL SECURITY BENEFITS

We Heal Challenges with Knowledge & Right Processes

Anandan Subramaniam

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Employee Experience Assessment – a Retention Strategy

With the growing trend of “Engaging Employee” which is directly related to Achieving the Business Goal of an Organization, Employee experience assessment is one of the best tools in determining such engagement.

There are various tools and techniques utilized by the Employers to keep their Employees engaged. The most significant areas are:

- △ Rewards and Recognition programs
- △ Appreciation
- △ On-going trainings
- △ Celebrations (festivals, birthdays, occasions on achievements, etc)
- △ Two-way communication
- △ Skill enhancement programs
- △ Opportunity to learn and grow across segments

A periodical – minimum once in 6 months or maximum once in a year – assessment/ survey, based on the following metric shall be mandatory for a management to move forward next stage.

The major factors which influences the individual employee are:

1. Appreciation
2. Relationship with team and Manager
3. Development
4. Company culture / Outlook
5. Communication
6. Compensation vs. Market

Few of the above, like Company culture and Appreciation are very sensitive variables, where the Organization had to be more specific in consideration.

If Communication is less favourable to an employee may not be an irritant factor as compared to worst Company culture or not getting appreciated.

Compensation too is a determining factor for any individual employee, but it may have an effect only if the financial burden of the individual has considerable increased in his personal life and affects.

Where non-appreciation for hard work is demotivating, which influences the performance and belongingness fails if the culture is bad.

Metrics	Objective	What if agreed by the employee	What if disagreed by the employee
Appreciation	Whether the employees are motivated to perform with full potential. It matters most in Employees Satisfaction	Expect Improved performance from the employee	To identify the reasons for disagreement and review with the employee
Relationship with Team and Manager	Collaboration of the team is significant in meeting Business objectives. Organizational achievements are beyond personal assumptions and biases, if any	The flavour of such relationship will pass through other departments and reflect the company culture	The grounds such discontent should be addressed at fast phase
Development	Opportunities made available to everyone, in enhancing their skills which can better the performance in current and future capabilities	The individual is on the track and fit for capabilities of change. Further the capacity with related programs	If it is not happening because of the individual, then improvement plans should be initiated. Else, the appropriate skill shall be identified
Company culture	The way the Organization achieves its Mission. A set of code which it feels fit, where a team of individuals work in a group and produce the desired results	There is a sync between the employee and the organizational culture. Such consideration shall be disseminated among others	Prevalence of mismatch in the expectation between Company & and the individual or misunderstanding shall be probed and acted accordingly
Communication	A regular Two-Way information dissemination between the employee & Manager or Management will enrich bond amongst both which make more accountability either side	Openness and transparency will improve health of the Organization. This feedback will determine such positivity	Hidden information or surprises will demoralize the spirit of an individual employee while performing
Compensation paid vs. market	One of the key factors which influences the employee's performance. More is good for both and less can be compromised with other benefits	Employee may not complain if it is more than the market	Reasons for paying lesser than the market shall be substantiated with appropriate justification

Human Resource planning helps the management in a bigger way, while it decides on expansion or structuring the size. This assessment/survey will make more visibility of “Intent to Leave” by any employee significantly, which is beneficial in manpower planning/ succession planning. Besides, if dissatisfaction of employee is more and evident, then the Employer may not invest on the individual.

Determining Supervisory Capacity in an Establishment

Any organization broadly, will have three categories of Employees:

- a) Worker
- b) Supervisor
- c) Manager

Currently the Supervisor category exists only in manufacturing industries and retail industries, where the same was replaced with a different nomenclature – Team Lead – in Service industry and other establishments.

In this Blog, why we are discussing who is a Supervisor, in any establishment?

Reason:

- A Supervisor by designation is a workman
- A Supervisor by capacity is not a workman

Workman under few Statutory legislations have some privileges, whereas such privileges are not available for those who have Supervisory or Administrative or Managerial **CAPACITY**.

What is the difference between a Supervisor by designation or a Supervisor by capacity?

Section 2(s) of The Industrial Disputes Act defines workman as any person (including an apprentice) **employed in any industry** to do any **manual, unskilled, skilled, technical, operational, clerical or supervisory work**, for **hire or reward**, terms of employment be express or implied and includes any such **person who has been dismissed, discharged or retrenched in connection with, or as a consequence of dispute**. It excludes persons employed in army/Navy/Air Force/Police and those employed in mainly managerial or administrative, supervisory capacity and drawing wages of more than INR 15,000.

- » Any individual who is working in purely managerial and/or supervisory capacity does not fall within the definition of workman under the Industrial Disputes Act.

- » Where a person performs diverse functions, the nature of the main function performed by such individual must be considered to determine whether the individual is a "workman or not".
- » Mere designation of an individual does not determine the nature of work. Even if a person is designated as supervisor, the employer must prove that his work and his duties were in nature of a supervisor.

The Hon'ble Bombay High Court, in Union Carbide India Ltd vs Samuel case, summarized the tests laid down by the Hon'ble Supreme Court in various decision as follows.

".... The Principle, therefore, is, one must look into the main work and that must be found out from the main duties. A supervisor was one who could bind the company to take some kind of decision on behalf of the company. One who was reporting merely as to the affairs of the company and making assessment for the purpose of reporting was not a supervisor..."

The Hon'ble Supreme Court proceeded thereafter to observe,

In broad sense, one having authority over others, to superintend and direct. The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine of clerical nature, but requires the use of independent judgment

In so far as the Apex Court is concerned, some of the tests laid down are:

1. Designation is not material but what is important is the nature of work
2. Find out the dominant purpose of employment and not any additional duties the employee may be performing
3. Can he bind the company/employer to some kind of decisions on behalf, of the company/employer?
4. Has the employee power to direct or oversee the work of his subordinates
5. Has he power to sanction leave or recommend it, and
6. Has he the power to appoint, terminate or take disciplinary action against workmen.

The emphasis is laid on the **nature of duties and powers conferred** on an employee rather than the designation.

Definition of Ex-Gratia Payment

Ex-Gratia is a monetary consideration by an Employer, which is done voluntarily, out of kind. It neither carries liability on the employer nor legal obligation.

In many establishments, this terminology is used in various payment types. We will discuss few such types, in this blog.

Nowadays, few establishments pay “such amounts”, to those select few employees, where there is no policy of “Project based or Performance based incentive”. Usually these amounts are considered as an “ex-gratia”, which is easy for accounting purposes and it does not become a “precedent”.

In few of my previous organizations, our Management was magnanimous enough to release some funds towards “medical emergency of self/spouse/dependents” which may not be covered under Medclaim/exceeding the Medclaim. Those amounts were treated as an “ex-gratia”. And it is decided only in deserving cases, and not an UNO payment (Universally, Necessarily, Ordinarily), hence called as an “ex-gratia”.

Hope few other Proprietary or Partnership establishments, do pay such non-regular payments (as a lumpsum), which were considered as an “ex-gratia”. This is a normal practice, where the employer pays a considerable amount to meet out specific expenses of employees, during (a) academic year opening, (b) marriage in the family (c) emergency medical expenses, etc.

During Festival seasons (Onam, Holi, Diwali, Ramzan, Christmas, etc) – establishments have practice to release “Share in the profit”. For those who are eligible to receive such “Share in the Profit”, it is considered as “Statutory Bonus”.

Notwithstanding, whether the establishments

- earn profit (every profit year) or
- do not earn profit (compulsory after 5 years),
- it is mandated under the Legislation (PoB Act-currently subsumed under the Code on Wages) to disburse
 - a minimum percentage limiting to a fixed amount (8.33% on 7000) or
 - the Minimum Wages (for those who are covered under Scheduled Employment), whichever is higher.

- And, such Statutory Bonus is “Mandatory” only to
 - those “eligible employees” (earning a threshold wage as prescribed the Government or less per month)
 - for the “eligible months in the previous FY” (all such months, where they have earned a threshold wage or less)

Where Trade Unions are strong & influential and in High-Profit making establishments, Managements were highly considerate to include other employees, who were “out-of the Statutory Bonus bracket” and disburse the “share in the profit”, which is wholly, called as an “ex-gratia”.

In few Establishments, where the Maximum Statutory Bonus is restricted to Rs.16,800, anything paid more than this, to eligible employees is called as an “ex-gratia”.

Considering “ex-gratia” in the Books of Accounts (and in the Form C, under the PoB Act), is a cumbersome job after the last amendment, after the insertion of **“payment of Statutory Bonus to a minimum of Rs.7000 (which is 8.33%) or Minimum wages, whichever is higher”** in the provisions of PoB Act.

Reason for this complexity is,

- Where an establishment decides to declare 20% (which is maximum)
- Such establishment is an industry, which is covered under Scheduled Employment
- An Establishment, which comprises of all types of employment (Unskilled, Semi-skilled, Skilled), and those who do not come under scheduled types
- In this establishment, computing 20% is highly complex (which will be more than 16800 and not universal across employment type)

Such establishments blindly consider any amount paid to an employee, which is more than 16800 as ex-gratia, which is erroneous. Here the consideration of ex-gratia should be, any amount which is more than 20% of Minimum wages, if it is higher.

Ex-Gratia payment is taxable under the IT Act.

Internal Committee – How to overcome challenges in constituting an Internal Committee?

Every Organization having 10 or more employees on their rolls, do find it challenging to constitute an Internal Committee as per Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Let us discuss few challenges and workable solution available before the Employer:

Challenge-1: By an Order in writing, constitute a committee (section 4(1))

Workable solution: Most of the Employer do not constitute by an Order, by the Management. Constitution of the Internal Committee (IC) and nomination of the Presiding Officer, Other Members and External Member, shall be done basis of a written Order – i.e. either by (a) a Board Resolution or (b) an Order by the Partners or the Proprietor or (c) an Order by the Director

Challenge-2: Internal Committee shall be constituted at all administrative units or offices (section 4(1))

Workable solution: Where branch strength is 10 or more, a separate committee shall be constituted and notified – Employer can have, all or few members of the Internal Committee of Corporate/Head office. It is always suggested that a local representative be nominated in each branch, if majority of the IC members are from Corporate/Head office, to facilitate smoother enquiry, in case of any complaint by the aggrieved woman.

Challenge-3: A Presiding Officer Shall be woman employed at a Senior Level at workplace from amongst employees (section 4(2) (a))

Workable solution: The challenge employer faces here is: Senior meaning, by age or seniority in the organization?

A Presiding Officer is going to (a) determine whether the Complaint can be admitted for an enquiry (b) whether the complaint can be referred to conciliation process, if agreed by the aggrieved woman (c) differentiate and identify the impact of such sexual harassment on the aggrieved woman (d) hold principles of natural justice during enquiry process (e) thoroughly record and document the entire enquiry process (f) appropriately report the right recommendation to the Management, on the basis of the outcome of the enquiry (g) have right expertise to work with other internal and external member/s, (h) arrive at a consensus on decision based on the

enquiry outcome (i) hold principles of law in case of a division in recommendation amongst the members, etc.

Hence as an individual, such person should have the maturity to handle the above mentioned and inclination towards recognizing concerns of a woman with reference to sexual harassment.

Where the core process of an Organization is different, identifying an person, mainly a woman employee, who needs to be a Woman crusader or legal professional or an activist.

Extent possible, the IC should comprise of women members who have been trained on the Prevention of Sexual Harassment – Definition, Policies, Procedures, etc

Challenge-4: Not less than 2 members amongst employees, preferably committed to cause of women or person familiar with issues relating to sexual harassment (section 4(2) (b))

Workable solution: Here the Employer has the option of choosing either Female employee or Male employee, who were committed to cause of the woman. Nevertheless, the Employer shall ensure that 50% representation of Internal Committee shall be women.

Challenge-5: One member from amongst non-governmental organizations or associations committed to the cause of women or person familiar with the issues relating to sexual harassment. (section 4(2) (c))

Workable solution: Be informed, that there is no requirement, here to nominate only Legal professionals as an External Member, which majority of employers do. There is an advantage in having Legal Professional as an External Member, but not mandatory. Further, many of the Employers identify only Female, to increase the proportion of Female category where few Male employees who were nominated as IC members.

Employers have an opportunity to have right, balanced person from outside, who has the ability to weigh the documents, records, witness depositions and impact to the individual woman. He/she can assist the Internal Committee in a bigger way, where there cannot be any internal influence. Hence, Employers need to rightly choose a person who can become an External member.

All committee members, including the Presiding Officer and External member, are to be more accessible, easily approachable and appropriately committed to the complaints, if any. All such members shall be sensitive to the issues and understand the impact to the aggrieved woman or to the respondent if the complaint is malicious and to the Organization overall.