

Strategic and Organization Description Profile™ – Introduction

The purpose of human capital is to create value, to make the organization more competitive, and to help the organization achieve its strategic and business objectives. Numerous external and internal factors and forces affect the value your organization derives from its human capital, the achievement of goals, and your exposure to human capital related risks and employment related liabilities. These force and factors define the nature and scope of the employer-employee relationship, provide context to your human resource management decisions, and determine and influence the applicability and scope of employment law compliance.

External factors and forces include the economy – increasingly the global economy – technology, the price of commodities, such as fuel, changing customer demands, changing social and political pressures, and employment laws and regulations. Internal factors and forces include the size, composition, and activities of your work force, your industry classification, your geographic locations, your organizational structure, whether or not you contract with government agencies, whether you are a publicly traded firm, your business objectives, your code of ethics, and your organizational culture and values.

This *Profile* is designed to assess the strategic components of your human capital management activities, identify key internal and external factors about your organization, and expose risk factors. With this information your organization will be better able to determine which human resource management and employee relations activities and behaviors are most urgent and cost effective, and which employment laws are currently applicable to your organization. By taking the time to complete this section first, your organization will be better able to evaluate its human resource management strengths and weaknesses, prioritize tasks, develop an appropriate plan of action, enhance the value of its human resource capital, and reduce its exposure to employment practices liabilities.

Strategic and Organization Description Profile™ – Introduction

1. A purpose of human capital is to add value; does your organization’s human capital add value?
 Yes No N/A
2. A purpose of human capital is also to create a competitive advantage; does your organization’s human capital give it a competitive advantage?
 Yes No N/A
3. If your organization managed its other assets and functions and assessed business outcomes the way it manages and assesses its human resources, would it be as successful?
 Yes No N/A
4. Are your organization’s human resource strategies and activities aligned with its business strategies and goals?
 Yes No N/A
5. Has your organization translated and articulated HR activities into financial and value added terms and defined how your human resources contribute to your organization’s strategic goals?
 Yes No N/A
6. Do your organization’s key business measurements and metrics include human capital related metrics?
 Yes No N/A
7. Has your organization identified and assessed its human capital related risks?
 Yes No N/A
8. Has top management in your organization determined what level of human capital related risk is acceptable?
 Yes No N/A
9. Does your organization regularly assess its employment brand and its impact on talent management?
 Yes No N/A
10. Does your organization regularly assess its culture and values to determine their impact on the achievement of business objectives, talent management, and compliance?
 Yes No N/A
11. Does your organization survey its employees to determine how your organization’s business strategies, culture, HR management activities, and employment practices affect employee satisfaction, commitment, and engagement?
 Yes No N/A
12. Does your organization survey its managers and supervisors to determine their level of satisfaction with new hire quality, and other key HR management activities?
 Yes No N/A
13. Organization-wide, how many full-time and part-time workers does your organization employ?

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14. What percent of your organization's work force is classified as regular, a/k/a, "permanent" employees?

15. Does your organization employ workers on a temporary basis, hire casual labor, or use contract or "project-only" workers?

Yes No N/A

16. Does your organization employ seasonal workers, volunteers, or interns?

Yes No N/A

17. Does your organization use "leased" employees?

Yes No N/A

18. Does your organization use independent contractors?

Yes No N/A

19. Does your organization use subcontractors or workers from temporary agencies?

Yes No N/A

20. If yes to Question #19, does your organization ensure that subcontractors and the temp agencies used comply with all employment laws, including the employing only workers that are authorized to work in the United States?

Yes No N/A

21. Does your organization employ both "exempt" and "non-exempt" employees?

Yes No N/A

22. Does your organization employ foreign nationals at employing units within the United States?

Yes No N/A

23. Does your organization employ U.S. citizens in foreign countries?

Yes No N/A

24. Is the composition of your organization's work force representative of the surrounding community?

Yes No N/A

25. Are all or most of your organization's employees employed "at will"?

Yes No N/A

26. Does your organization have employees who work under a collective bargaining agreement?

Yes No N/A

27. Does your organization have employees with individual employment contracts?

Yes No N/A

28. Does your organization's application forms, offer letters, or employee handbook create an expectation of job permanency or limit your right to terminate employees?

Yes No N/A

29. Enter your organization's industry classification(s).

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30 Does your organization have more than one work site?

- Yes No N/A

31. Does your organization employ workers in more than one state?

- Yes No N/A

32. Enter the number of workers your organization employs in each state.

Alabama <input type="text"/>	Alaska <input type="text"/>	Arizona <input type="text"/>	Arkansas <input type="text"/>
California <input type="text"/>	Colorado <input type="text"/>	Connecticut <input type="text"/>	Delaware <input type="text"/>
D.C. <input type="text"/>	Florida <input type="text"/>	Georgia <input type="text"/>	Hawaii <input type="text"/>
Idaho <input type="text"/>	Illinois <input type="text"/>	Indiana <input type="text"/>	Iowa <input type="text"/>
Kansas <input type="text"/>	Kentucky <input type="text"/>	Louisiana <input type="text"/>	Maine <input type="text"/>
Maryland <input type="text"/>	Massachusetts <input type="text"/>	Michigan <input type="text"/>	Minnesota <input type="text"/>
Mississippi <input type="text"/>	Missouri <input type="text"/>	Montana <input type="text"/>	Nebraska <input type="text"/>
Nevada <input type="text"/>	New Hampshire <input type="text"/>	New Jersey <input type="text"/>	New Mexico <input type="text"/>
New York <input type="text"/>	North Carolina <input type="text"/>	North Dakota <input type="text"/>	Ohio <input type="text"/>
Oklahoma <input type="text"/>	Oregon <input type="text"/>	Pennsylvania <input type="text"/>	Rhode Island <input type="text"/>
South Carolina <input type="text"/>	South Dakota <input type="text"/>	Tennessee <input type="text"/>	Texas <input type="text"/>
Utah <input type="text"/>	Vermont <input type="text"/>	Virginia <input type="text"/>	Washington <input type="text"/>
West Virginia <input type="text"/>	Wisconsin <input type="text"/>	Wyoming <input type="text"/>	

33. If your organization has more than one work site, are human resource management decisions, e.g., recruitment, selection, and hiring, employment policies, training programs, and termination decisions decided or determined at the work site level?

- Yes No N/A

34. If yes to Question #30, do top management and the corporate HR department regularly visit field locations?

- Yes No N/A

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35. If yes to Question #30, do top management and the corporate HR department regularly review the employment policies, practices, procedures, and performance of field units?

Yes No N/A

36. If yes to Question #30, do employees at field units have access to top management and/or the corporate HR department?

Yes No N/A

37. Has your organization established procedures that allow employees to bypass their immediate or field location supervisor or manager and contact someone at corporate when they have problems, complaints, or grievances?

Yes No N/A

38. Has your organization promulgated a “no retaliation” policy, has it trained managers and supervisors on the implications of the policy, and does it follow up with employees filing a complaint to ensure retaliation has not occurred?

Yes No N/A

39. Is your organization a federal, state, or local government, subcontractor, or grantee?

Yes No N/A

40. If yes to Question #39, what is the value of your government contracts?

41. Is your organization a publicly traded company?

Yes No N/A

42. Does your organization have a code of ethics?

Yes No N/A

43. Does your organization’s culture and values promote ethical conduct, compliance with the law, diversity, and equal employment opportunity?

Yes No N/A

44. Has your organization established internal controls to help it identify violations of your code of ethics, your employment policies and procedures, and employment laws or to alert management of possible exposure to significant employment related liabilities?

Yes No N/A

45. Do top management and your Board of Directors require that significant violations of your code of ethics and employment law compliance be brought to their attention?

Yes No N/A

46. Does your organization outsource job functions or activities?

Yes No N/A

47. Does your organization outsource some or all of its human resource management activities and function?

Yes No N/A

48. Has your organization been involved in a merger or acquisition?

Yes No N/A

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49. Did your organization perform human resource management due diligence as a part of its M&A activities?

Yes No N/A

50. Has your organization considered or purchased employment practices liability insurance (EPLI) coverage?

Yes No N/A

51. Have you translated and articulated HR activities into financial and value terms and defined how your human resources contribute to your organization's strategic goals?

Yes No N/A

*Strategic and Organization Description Profile™ — Analysis***Analysis for Questions 1 through 3**

The purposes of your organization’s human capital are to add value to your organization and to give it a competitive advantage in the marketplace. This means having the right employees, performing the right tasks, in the right locations, at the right time, for the right compensation. It also means that your organization must: 1) objectively identify which departments, functions, and jobs contribute most to the organization’s success; 2) identify the employees that are your organization’s top performers and create the most value; and 3) develop a total rewards program that supports and rewards those functions and employees. In other words, your organization should apply the same management techniques and conduct the same rigorous assessment of its human capital as it does other organizational function and assets.

NOTE: See the ELLA Pre-HR Audit Worksheet™ in the *HR Audit Assistance and Tools Profile™* to help your organization answer Questions 1-12.

Analysis for Questions 4 and 5

A common and often repeated criticism of human resource management is that it is ineffective in quantifying its value, in demonstrating a return on investment (ROI), and in showing that it has a vital role to play in implementation and achievement of the organization's strategies. Unfortunately, many C-suite executives view human resource management as a “touchy-feely” activity that is primarily concerned with compliance and is best measured by its impact on costs.

The importance of aligning HR management strategies, policies, and practices with organizational objectives was noted by the Society for Human Resource Management (SHRM) in its study on *The Future of the HR Profession*. As noted, the HR agenda should be derived from the organization's business objectives, the focus of HR management should be on strategic priorities, and HR management should be built on business, financial, and consulting skills.

Thus a critical HR auditing assessment area is the alignment of your organization’s HR management strategies, policies, and practices with its business objectives, imperatives, and strategies. Your assessment should connect the dots between HR related activities and outcomes and organization’s objectives and goals. Your assessment should distinguish between efficiency and effectiveness of activities; between low cost and cost effectiveness. Your assessment should find tangible evidence that employment policies and human resource expenditures advance — or at least contribute — the achievement of organizational goals.

In short, your organization’s HR auditing activities should include not only compliance issues — you can get your lawyers, consultants, and risk managers to do that — but also on those issues that will make the organization more competitive, enhance business operations, and improve profitability.

Analysis for Question 6

Rule #1: Organizations measure what they treasure. That is, if you want to know what is important to your organization, determine what it is measuring, such as total sales, operating revenue, cost of goods sold, labor costs, operating expenses, net profits, or net operating profits. This assessment activity provides critical information about your organization. If your organization says that EEO and diversity are important, but it is not measuring the outcomes in these areas; they are not important!

Rule #2: What gets measured gets done. Observation and measurement are powerful motivators. Managers, supervisors, and employees quickly understand that what is important to your organization is what it measures. Saying that your organization values diversity and is committed to EEO compliance on your website is not the same as measuring a manager's performance in achieving your organization's diversity and EEO goals. If your organization is not measuring managers' performance and holding them accountable for their performance, they will spend their limited time and effort on those issues your organization considers important: those issues your organization measures.

Rule #3: There are no separate "HR metrics"; there are only HR metrics that are a part of your organization's business metrics. That is, HR management and the measurement of its activities and processes are not — should not be — separate from the activities and processes of the organization. Your organization's HR metrics should allow the organization to evaluate the HR activities and make decisions for the purpose of achieving business objectives. HR metrics that do not allow management to make decisions are of little value.

NOTE: According to a survey by Staffing.org and the HR Metrics Consortium, "new hire quality" was rated by C-level executives as the most important HR performance metric.

Analysis for Questions 7 and 8

According to a survey of international risk managers reported on businessinsurance.com (June 1, 2007), "the human capital risk — including skills shortages, succession issues, and the loss of key talent — is the biggest threat facing organizations worldwide...it is also one of the least effectively managed." According to an article in CFO Magazine, organizations "...fear employee lawsuits more than any other legal threat."

Human capital risk is the possibility (probability) that some current or future event (employment policy, practice, procedure, or process) will cause a loss or peril. Since virtually every employment decision your organization makes is subject to challenge or can have an impact on your employment brand, risk assessment should be a fundamental aspect of your HR auditing activities. According to [The Professional Practices Framework](#), published by the Institute of Internal Auditors (IIA):

"The internal audit activity should assist the organization by identifying and evaluating significant exposures to risk and contributing to the improvement of risk management and control systems." (Page 14)

“The internal audit activity’s plan should be designed based on an assessment of risk and exposures that may affect the organization. Ultimately, key audit objectives are to provide management with information to mitigate the negative consequences associated with accomplishing the organization’s objectives, as well as an assessment of the effectiveness of management’s risk management activities. The degree or materiality of exposure can be viewed as risk mitigated by establishing control activities.” (Page 177)

NOTE: While the HR audit should help identify and assess human capital risk exposure, it is the sole responsibility of top management to determine the level of “residual” risk that is acceptable to the organization.

Analysis for Question 9

Your organization’s employment brand is about creating perceptions; perceptions about what employees can expect from their employment with your organization. It’s about creating a message about why an employee should — or should not — work for your organization. Because your employment communicates important messages about your organization, it should be considered an extension of your organization’s brand and should be aligned with your organization’s strategic objectives.

Organizations spend vast sums to create, promote, and protect their product brand. At the same time many organizations pay scant attention to their employment brand. Experts note that an employment brand can be a valuable tool in helping an organization attract and retain high performers and top talent. Thus the nurturing and protection of your organization’s employment brand should be a priority.

Your organization should regularly assess its employment brand for continued alignment, for the clarity of its message, and for its impact on helping your organization achieve its talent management, EEO, and diversity objectives. Your organization can monitor its employment brand through discussions with recruiters and college placement centers, by reviewing comments posted on vault.com and other employment sites, by reviewing comments posted on blogs, and through discussions with applicants — both those that accept your job offers and those that decline.

Analysis for Question 10

As noted in a web article from International Survey Research: “The culture of an organization has a powerful influence on its performance as a business. The values which a company subscribes to, and the norms of behavior it prescribes, have a significant impact on the execution of its business strategy.” An organization’s culture and values can help distinguish it in the marketplace.

Because culture and values help define and choreograph employees’ day-to-day activities and interactions, your organization’s culture and core values provide employees with a yardstick against which their behavior, conduct, and activities can be measured.

Directives from Securities and Exchange Commission, the U.S. Sentencing Commission, the New York Stock Exchange, and NASDAQ recognize the importance of culture in ensuring

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compliance with ethical standards. These directives require that your organization develop a culture and values that foster, promote, and reinforce high ethical standards and demonstrate a commitment to both the letter and spirit of the law.

Your organization's HR auditing activities should include an assessment your culture and values by conducting a cultural scan or an employee survey. This assessment should help your organization determine if they actually contribute to high ethical standards and legal compliance?

Since your organization's culture and values are a reflection of senior management — both in what they say and what they do — your audit should also include an assessment of the messages being sent by top management. High ethical standards and a commitment to EEO should be a core competency of senior management and it should exhibit high ethical conduct even when it is easier — less costly — to cut ethical corners.

Analysis for Questions 11 and 12

Knowledge is a competitive asset. Organizations spend vast sums to acquire it, manage it, and protect it. Interestingly many organizations know more about what motivates their customers than they know about what motives their employees: their most important asset. Employee surveys, applicant surveys, focus groups sessions, and exit interviews can be valuable tools in helping your organization identify what motivates employees; what employment issues are most important, most satisfying, and engender loyalty and employee commitment; and what action your organization can take to improve the return on this asset. If your organization is not periodically surveying employees it is missing an opportunity to enhance the value of its human capital and improve the return on its investment.

Employee surveys should be considered a critical element of your HR auditing activities. Employee surveys can be used to help validate other audit findings — specifically that your organization is in compliance with laws and regulations, internal policies and procedures, and professional standards. Employee surveys can help your audit team verify actual performance and achievement with stated objectives and policies.

From an employee relations perspective, employee surveys can play an important role in helping your organization identify real and perceived employee relations problems and help it develop a plan of action. An organizational strategy of benign neglect of employee relations problems only invites third party intervention and increases your organization's vulnerability to unionization.

NOTE: If the proposed Employee Free Choice Act (EFCA) is enacted, it will further increase the importance of early identification of employee relations and employee dissatisfaction issues. It will also reduce your organization's response time. If it waits until a union organizer presents union authorization cards, it will be too late

The Ledbetter Fair Pay Act of 2009, which addresses the issues of pay discrimination, and the EEOC's and OFCCP's stated emphasis on attacking systemic discrimination further

heighten the need for intelligence about whether your organization's compensation practices and outcomes are perceived as internally equitable. Systematic assessments about compensation differentials are now vital. Your organization should include in its assessments information about employees' experiences and perceptions of pay equity. Employee surveys can be a valuable tool in eliciting that information.

In the War for Talent, it is critical that your organization also identify and assess information about its total compensation package and external pay equity. Employee surveys, in addition to salary studies, can provide your organization with important information about its competitiveness in the marketplace.

Your organization should survey its managers and supervisors periodically. Your managers' survey should include questions about new hire quality, address productivity issues, address labor cost and cash flow issues, consider staff and career development issues, and evaluate specific employment policies and practices.

Analysis for Question 13

The size and composition of your work force, organization-wide and at each employing unit, will have an impact on your organization's human resources management activities, salary and benefit administration, and the application of federal, state, and local employment laws. The larger and more diverse your organization's work force, the greater the need for a more structured and organized approach to human resources management. For instance, at the 100-employee level you are required to file EEO-1 forms detailing the demographic makeup of your work force. As the size of your work force increases, your organization will find that a well-drafted employee handbook increases organizational orderliness and improves employee communications.

In addition to creating the need for a structural and systematic approach to hiring, training, and managing employees, the number of employees is also a critical factor in triggering the application of various federal, state, and local employment laws. While the provisions of some laws like the Fair Labor Standards Act (FLSA), the Equal Pay Act, the Health Insurance Portability and Accountability Act (HIPAA), the Drug Free Workplace Act of 1988, the Electronic Communications Privacy Act (ECPA), Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), The Uniformed Services Employment and Reemployment Rights Act (USERRA), Employee Retirement Income Security Act of 1974 (ERISA), Occupational Safety and Health Act of 1970 (OSHA), Executive Order 11246, the Consumer Credit Protection Act, the Fair Credit Reporting Act, the National Labor Relations Act of 1935 (NLRA), the Immigration Reform and Control Act of 1986 (IRCA), and the Employee Polygraph Protection Act of 1988 apply to all employers regardless of the number of employees, the employment provisions of the:

- Emergency Planning and Community Right to Know Act of 1986 apply to employers with 10 or more employees;
- Civil Rights Act of 1964 (Title VII), the Pregnancy Discrimination Act of 1978; the Americans With Disabilities Act of 1990 (ADA), and the 1991 Amendments to the Civil Rights Act apply only to employers with 15 or more employees;

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- Age Discrimination in Employment Act of 1967 (ADEA), the Older Workers Benefit Protection Act of 1990 (OWBPA), and the Consolidated Omnibus Reconciliation Act of 1985 (COBRA) apply to employers with 20 or more employees;
- Family and Medical Leave Act of 1993 (FMLA) apply to employers with 50 or more employees; and
- Worker Adjustment and Retraining Notification Act of 1988 (WARN), and the Clean Air Amendments of 1990 apply to employers with 100 or more employees.

Your organization should also be mindful of the employment thresholds in state and local laws. For instance, a number of states with fair employment statutes have established lower thresholds for the definition of a covered employer. Thus, it is important that your organization monitor the applicability of federal, state, and local employment laws as the size of your work force changes.

Analysis for Questions 14 through 21

These questions are designed to help your organization identify and classify your employees and describe the composition of your work force. Obviously not all employees are the same. Your mix of regular/temporary, full-time/part-time employees, as well as your use of contract workers, leased employees, temp agency employees, and independent contractors will depend on a number of strategic and operational factors, including your organization's long-term and short-term objectives, product mix, budget, industry, and use of technology. Since employees are hired to produce a product or service or to support others that do, the composition of your work force should be structured to help your organization achieve its business objectives.

As a starting point, your organization should clearly define each job position and classify each employee's/non-employee's status. Since benefits, rights, privileges, and responsibilities flow from an employee's position and status, your organization should ensure that each employee/non-employee understands what your organization expects from them and what they should expect from your organization. That is, your organization should ensure, for instance, that workers hired on a contract or project-only basis understand the limited nature of their employment relationship with your organization, be told of any limits to their eligibility for organization-provided benefits, and be told of any restrictions on their eligibility for future regular, full-time employment.

In considering the classification of your employees, your organization should note the EEOC's position concerning temporary and contract employees. In its "Enforcement Guide, the EEOC reminds employers that temporary and contract employees are covered under the anti-discrimination statutes and that these workers can be counted in determining when you have reached employment threshold to trigger Title VII, ADA, and ADEA applicability. It is also the EEOC's position that the use of leased and temp agency employees can create joint employer liability. In light of the EEOC's position on the treatment of temporary and leased employees, your organization should ensure that its EEO and sexual harassment policies cover all employees regardless of their regular/temporary, full-time/part-time, or even non-employee status.

Your organization should also consider the National Labor Relations Board's (NLRB) position on temps and leased employees. Formerly the NLRB had ruled that temps and leased employees could be included in the same bargaining unit as employees of the employer. In a more recent decision however the NLRB reversed its previous decision and ruled that temps and leased employees could be included in the same bargaining unit as employees of the employer only if both employers consented to the inclusion.

As noted in the *Wage and Hour Profile™*, your organization should be careful in its classification of exempt/nonexempt employees and in its determination of employee/independent contractor status. While there are obvious benefits to classifying workers as “exempt” or as “independent contractors” — your organization doesn't have to pay overtime on exempt employees, and it doesn't have pay overtime or payroll taxes on independent contractors — misclassifying these workers can be costly.

While the use of third party vendors, including janitorial and maintenance services, to provide non-core activities and to supplement your staff, can be a cost-effective manpower planning activity, it can also expose your organization to governmental scrutiny and potential liability if the vendors violate the Fair Labor Standards Act (FLSA) concerning the payment of minimum wage and overtime or the employment of minors, or violate the employment eligibility requirements under the Immigration Reform and Control Act (IRCA). It has become increasingly important that your organization become more assertive in ensuring that vendors with whom it has an ongoing or long-term relationship comply with the various employment laws. It is now prudent that you provide to all vendors a copy of your organization's employment policies and indicate your expectation that they comply with all employment laws. In some situations your organization may also find it necessary to require that vendors certify that they are complying with nation's employment laws, to conduct independent verification of employment eligibility of a vendor's employees, and to provide additional training to your management team on vendor relationships.

Analysis for Questions 22 and 23

In the global economy, workers, like capital and technology, are no longer limited by national borders. Workers and employing units are increasingly mobile, transportable, and frequently interchangeable. In the global economy, foreign workers are typically used to supplement the local work force and to provide needed skills and expertise.

As noted in the *Immigration Issues Profile™*, the use of foreign workers and the stationing of American workers overseas create additional HR management requirements:

- 1) Foreign workers and employing Americans overseas require more sophisticated HR management practices. Your organization will have to become more conversant not only with our immigration laws, but also the employment laws of other countries. It will have to install more effective information and document management systems — tracking foreign nationals and complying with numerous paperwork and reporting requirements can become a formidable task. Your organization will also have to become more familiar with the financial and employment tax considerations of employing foreign nationals.

- 2) Employing foreign workers requires increased attention to employee communications. Many employment laws and regulations contain notice requirements that require your organization to provide specific information to its employees. Note your organization may also have a general duty to ensure that all employees are aware of and follow safety rules and procedures. Since foreign workers may have limited English language skills — of course this may also be true of some of your non-foreign work force — your organization may have to translate employment posters and safety rules into other languages and conduct group and individual employee meetings to review these laws and rules. Because foreign workers may be unfamiliar with or have limited access to electronic and other forms of communication media, your organization may also have to develop alternative methods of communicating required information.
- 3) Employing foreign workers requires your organization to develop a heightened understanding of and sensitivity to cultural differences. Foreign workers typically bring different cultural perspectives to the workplace. For instance, foreign workers may have a different standard of acceptable gender-based interaction and conduct than do American workers. As a result, additional effort may be required to ensure that all employees, including foreign employees, understand and abide by your EEO and sexual harassment policies.

Analysis for Question 24

The composition of your work force should reflect the surrounding communities and your efforts to embrace work force diversity and inclusion. In addition to any legal obligation your organization may have for affirmative action, and independent of your moral obligations for equal employment opportunities, in the increasingly diverse marketplace, work force diversity is a business imperative. If your organization want to sell in diverse markets, its needs workers with a diversity of competencies, skills, and perspectives. Increasingly the data show that work force diversity translates into higher revenue and profits. See the *Diversity Management™* and *Affirmative Action Plan Profiles™* for more information.

Analysis for Questions 25 through 28

These questions are designed to help your organization define its employer-employee relationship. The relationship in most organizations and for most employees is based on the “employment-at-will” doctrine, i.e., both your organization and its employees freely enter into the employer-employee relationship, and either you or your employees may sever the relationship at any time, with or without notice, and with or without cause. Of course your organization may alter the at-will relationship —either intentionally or unintentionally — by entering into a collective bargaining agreement, by negotiating individual employment contracts, or by the language you use in your employment handbook, offer letters, and other employment related communications.

Analysis for Question 29

In addition to the employment laws and regulations that apply to organizations generally,

your organization may be subject to industry specific statutes. For instance, if your organization operates a fleet of commercial vehicles in interstate commerce, it is likely to be subject to Department of Transportation (DOT) regulations concerning drug testing. Your industry and the types of products and the services your organization offers will also likely affect its employment practices, from salary and benefits to safety and health programs, and from your use of background investigations during the hiring process to the use of grievance procedures during the termination process. Your industry classification may also be used in determining your workers' compensation and employment practices liability insurance (EPLI) premiums.

From human resources management and risk management perspectives, your organization's industry classification determines not only the application of industry-specific laws and regulations and the nature and scope of workplace policies and procedures, but also has an impact on labor costs, your vulnerability to union organizing activities, and your organization's risk exposure to employment related claims.

Analysis for Questions 30 through 33

These questions address a number of strategic issues, including: your organizational structure, the degree of centralization/decentralization, the number and location of employing units, and the size of your work force. A variety of internal and external factors will affect how you organize and how your organization adapts to changing economic conditions, competitive pressures, and customer demands. Of course, these strategic decisions will impact the deployment, use, and management of your human capital. For that reason your organization's strategic planning should include the HR management implications.

As a general rule, as the number of work sites, the number of states in which your organization operates, the degree of decentralization, and the degree of employing unit autonomy increases, the greater the need for standardized employment policies, forms, processes, and procedures. An emphasis should be placed: 1) on alignment with organizational objectives; 2) on ensuring a consistent positive employee relations-nondiscrimination message; 3) in protecting your employment brand; 4) in improving transactional efficiency; 5) in lowering costs, and 6) in ensuring compliance with your organization's policies and with federal, state, and local laws. Note, however, that employment practices standardization should not be synonymous with bureaucratic rigidity. To be effective, your employing unit managers and supervisors need to be able to respond to and adapt to local situations, contingencies, and employee needs. Your organization's HR management practices thus should aim at instilling in your employing unit managers and supervisors your corporate vision and code of ethics, should give them guidelines through a set of directives that establish limits on their actions, and should give them the authority to make local decisions within these guidelines.

If you are a multi-state employer, complying with multiple state and local employment statutes and regulations can be a complex task. Employment thresholds, protected categories, unlawful practices, and sanctions vary from state to state, locality to locality. For instance, while some state and local statutes mirror the threshold, prohibitions, and protections of Title VII of the Civil Rights Act and other federal statutes, and prohibit

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employment discrimination on the basis of race, color, religion, national origin, age, sex, pregnancy, disability, and veteran status, others have lowered the employment threshold to include employers with one or more employees, or have expanded the list of protected categories to include marital status, familial status, appearance, political affiliation, matriculation, or sexual orientation. State and local jurisdictions are also leading the charge in enacting laws addressing smoking in the workplace and living wages.

SUGGESTION. As a part of your organization’s strategic HR planning, it should anticipate and assess how changes in the size or location of your work force will affect compliance, supervisory training, and policy needs. We suggest that your organization develop a state and local “Employment Law Impact Analysis” to help in this effort.

Analysis for Questions 34 through 38

Employee satisfaction surveys show that employees want a sense of belonging, they want to feel valued, and they do not like surprises — particularly about issues or decisions that affect their careers or jobs. Unfortunately, as the distance and remoteness from top management increases, these drivers of employee satisfaction become more problematic.

If you have multiple locations, your organization should ensure that top management and the corporate HR department regularly visit field locations, and you should regularly review the employment policies, practices, procedures, and performance of the field units to ensure compliance and coordination. From a compliance standpoint, your organization should ensure that all employees in field locations have received a copy of the employee handbook; that they are aware of your EEO and sexual harassment policies; that they are aware of your problem solving and grievances procedures; and that they are aware that your organization encourages them to bypass their immediate supervisor or field location manager and report their problems, complaints, and grievances directly to headquarters whenever they do not (cannot) receive satisfaction locally.

As a review of EEOC charge data for FY 2008 reveals, employment retaliation is a real problem (32% of all charges) that exposes employers significant liabilities. This problem increases as the distance and isolation of employees — and supervisors — from senior management and HR increases. Your organization must specifically address the issue of retaliation in its employment policies, ensure that all employees, supervisors, and managers are aware of the policy, and proactively conduct follow up discussions with employees filing complaints to determine if retaliation has occurred.

Analysis for Questions 39 and 40

For some organization, the requirements mandated as a result of a federal, state, or local contract or grant are the most critical factors affecting their HR management decisions. If your organization is a federal contractor or subcontractor with contracts of:

- \$2,500 or more, you are prohibited under the federal Rehabilitation Act of 1973 (Also see Executive Order 11758) from discriminating against “otherwise qualified” handicapped individuals.
- \$10,000 or more, you are subject to the provisions of the Walsh-Healey Public Contracts Act and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974. Your organization is also bound by the equal employment provisions and requirements of Executive Order 11246 and it must certify that it does not and will not maintain any facilities in a segregated manner, that it will not permit employees to perform services, at any location under its control, in segregated facilities, and that it will obtain similar certification from subcontractors.

Your organization must also comply with Executive Order 11625 concerning the utilization of minority businesses and the utilization of small businesses. Further, pursuant to the Armed Services Procurement Regulations (ASPR), Section 1-805, your organization must use its best efforts to utilize businesses designated in labor surplus areas. Likewise, pursuant to Executive Order 12138, your organization must take appropriate action to utilize the products and services of women-owned firms.

- \$25,000 or more, you are subject to the Drug Free Workplace Act of 1988.
- \$50,000 or more, you must develop an affirmative action plan, and, where appropriate, file an EEO-1 report.

Also note that in December 2008 the U.S. Citizenship and Immigration Services (USCIS) issued an interim rule that requires federal contractors with contracts of more than \$100,000 and subcontracts of more than \$3,000 to use E-Verify. While the implementation of this requirement is currently postponed until May 21, 2009, it is advisable that if your organization is a federal contractor that it begin preparation for the implementation of the E-Verify. See the *Immigration Issues Profile*™ for more information.

Analysis for Questions 41 through 45

Another factor affecting an organization's human resource management and employment practices is its status as a publicly traded company. Up until recently investors and the stock market were perceived to have little or no impact on an organization's human resources management decisions and activities. But, as a result of a Security and Exchange Commission (SEC) ruling, investors and stockholders, in certain circumstances, may challenge an organization's employment practices. And increasingly companies are being criticized for responding to the demands of Wall Street to report higher quarterly profits by closing plants and laying off workers. Perhaps more threatening, and certainly more costly,

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are the numerous requirements imposed by Sarbanes-Oxley and the U.S. Sentencing Commission Guidelines. In the aftermath of Enron, WorldCom, Inc., and other alleged misconduct by publicly traded companies, there is greater demand for internal and external oversight of governance, ethics, and corporate compliance. Codes of ethics and policy statement are not enough, organizations must install internal controls that deter and detect violations of law and ethical conduct. They must implement programs that promote "... an organizational culture that encourages ethical conduct and a commitment to compliance with the law." This includes a commitment to comply with employment laws. Top management must demonstrate their commitment by being actively involved in the ongoing attainment of an ethical and legally compliant organization. The I-didn't-know-what-was-going-on defense is no longer acceptable. For more information see the *Governance and Ethics Profile™*.

NOTE: Sarbanes-Oxley and the Sentencing Commission Guidelines apply not only to large, publicly traded firms. All organizations, including small business and non-profits, need to ensure that ethical and compliance requirements are met.

Additionally in the growing global economy, your organization may be required either as a contractor or subcontractor to comply with international employment and labor standards. In an effort to help create good citizenship among the world's corporations and establish minimum and uniform employment and labor standards in the international marketplace, the Council on Economic Priorities Accreditation Agency (CEPAA) created Social Accountability (SA) 8000. To be certified under SA 8000, a company must meet international standards dealing with child labor, forced labor, health and safety, collective bargaining, discrimination, disciplinary practices, working hours, and compensation. A company seeking certification must additionally comply with 13 International Labor Organization Conventions and Recommendations and two United Nations Declarations. Certification audits are conducted by a third party and consist of an audit not only of the organization applying for SA 8000 certification, but also the organization's suppliers and contractors. If your organization contracts out to third parties the manufacture or development of your products and services or if you are the recipient of such contracts, your organization may in the future have to adapt its employment practices to meet this international standard.

A critical component of your organization's profile is its culture and values. As noted above, the U.S. Sentencing Commission Guidelines recognize that ethical conduct and a commitment to compliance begins with and is sustained by a culture and values that support such goals. And as noted in the *Workplace Antidiscrimination™* and the *Affirmative Action Profiles™*, a culture and core values that encourage respect, tolerance, diversity, and inclusion play a vital role in helping an organization meet its equal employment opportunities obligations.

Compliance is however just one facet of your organization's culture and values. Your organization's culture and values make it distinctive in the marketplace; they impact organizational objectives and strategies; they help establish your employment brand, and

they define and choreograph employees' day-to-day activities and interactions. Your culture and values provide your employees with a barometer against which they can compare their behavior, conduct, and performance, and should be use as a metric by your organization in evaluating employees for promotion, advancement, compensation, and continued employment.

Analysis for Questions 46 and 47

For many organizations outsourcing is an important component of their human resource management activities. From payroll to benefits administration, from employee assistance programs to recruiting, from background investigations to risk management, HR outsourcing is a multi-billion dollar industry. The reasons for HR outsourcing are similar to the reasons for outsourcing in other functional areas: perceived cost savings, access to more sophisticated technology, access to greater expertise, and improve allocation of resources.

Experts note however that there are potential risks that should be recognized and managed. These risks include: 1) the political and public relations risks associated with laying off workers because their jobs have been outsourced; 2) the risk of selecting an inferior vendor, which results in higher cost, activities that are performed less effectively, or less responsiveness to HR customers: employees, applicants, managers, and senior management; 3) the risk of losing top talent that will be hard to replace if your organization has to repatriate the function outsourced; 4) the risk of misuse of confidential employee information and your potential exposure; and 5) the risk that a vendor goes into bankruptcy or is otherwise unable to perform the agreed upon services.

NOTE: In light of the continued use of HR outsourcing to perform HR activities and functions, HR metrics are changing from measuring HR department related activities and outcomes on the basis of full-time equivalents (FTEs) to measuring efficiency and effectiveness of the basis of “total human resource expense,” which includes the amount paid for outsourced activities.

Analysis for Questions 48 and 49

While many experts attribute the failure of mergers, acquisitions, and other forms of reorganization to “people” issues, a survey of corporate leaders reported that only 23% thought that HR played a strategic and operational role in their organizations, and only 37% actively consulted HR on mergers and acquisitions.

Considering the numerous human capital issues implicated in a merger or acquisition, the failure to identify and assess the potential human capital risks and opportunities represents a lost opportunity. Potential risks from M&A activity include: 1) the misalignment of human capital in the new organization; 2) the loss of top talent; 3) an inability to integrate employees into the new organization; 4) the failure to maintain EEO and diversity goals; and 5) the failure to identify incurred but unreported liabilities. Management that fails to address these risks exposes their organization to unbudgeted expenses and liabilities, damages employee and public relations, and hinders the success of the M&A activity. Thus as a part of your organization's M&A planning and due diligence, it should ensure that it identifies

and assess the human resources management aspects of the M&A and develops a plan of action to address these risks.

Analysis for Question 50

The potential financial impact of employment related claims and lawsuits can be enormous. Unfortunately general insurance coverage for general liability, directors and officers, and workers' compensation, does not cover losses from discrimination, sexual harassment, and wrongful discharge claims. To help determine your organization's financial exposure to employment related claims you should have your insurance broker and/or risk manager review your organization's current insurance policy protections. If your current policies do not provide adequate coverage, your organization should consider obtaining coverage under an EPLI policy. Note that employment practices risk management is a critical component of EPLI coverage. To ensure that your organization has implemented sound human resource management programs, carriers will review your job application and other personnel action forms, your employee handbook and policy statements, your supervisory and employee training programs, and your claims experience. Some will require or strongly suggest that you conduct an HR audit, and many offer a menu of loss control services. At issue: demonstrating that your organization is a "good risk." This will translate into lower premiums and more comprehensive coverage.

Strategic and Organization Description Profile™ — ELLA HR Audit Worksheet™

ELLA HR Audit Worksheets™ are designed to help you develop a plan of action. Questions and issues addressed in this *Profile* are categorized into one or more of the **Five Critical Components of the HR auditing process**. These questions and issues are then used to populate this *Profile's* HR Audit Worksheet™.

The Five Critical Components of the HR Audit Process:

- 1) **Activities**: Activities are tasks and actions that create or implement employment policies, practices, procedures, and programs.
- 2) **Behaviors**: Behaviors, in this context, are actions and conduct that affect — positively or negatively — the implementation or effectiveness of the organization's policies, practices, procedures, and programs, and demonstrate the organization's commitment to stated goals and objectives.
- 3) **Risk Assessment**: Risk assessment is the identification of current and/or future events that have the potential to cause loss, peril, or vulnerabilities; or that create opportunities for organizational success or an increased achievement of business objectives.
- 4) **Internal Controls**: Internal controls are processes, tests, and assessments that help ensure compliance, manage risks, and help ensure the achievement of organizational goals.
- 5) **Outcomes**: Quantitative and qualitative measurements and metrics that measure and help assess the achievement of organizational goals and objectives.

HR Audit Worksheet™ Instructions

Using the following scoring procedure, enter the issue “Critically,” and “Priority,” and your “Effectiveness” for each of the items listed. Then enter its status and any specific action that should or will be taken.

Criticality Rating: Describes the importance of the issue for your organization. Enter:

- 1) A rating of “1” if the completion or achievement of this issue is **extremely important** in achieving compliance or achieving organizational objectives.
- 2) A rating of “2” if the completion or achievement of this issue is **important** in achieving compliance or achieving organizational objectives.

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3) A rating of “3” if the completion or achievement of this issue is **marginally important** in achieving compliance or achieving organizational objectives.

4) A rating of “4” if the completion or achievement of this issue is **unimportant** in achieving compliance or achieving organizational objectives.

Priority Rating: Describes the urgency of completing this issue. Enter:

1) A rating of “1” if the completion of this issue is of **highest priority**.

2) A rating of “2” if the completion of this issue has **priority**.

3) A rating of “3” if the completion of this issue has **low priority**.

4) A rating of “4” if the completion of this issue has **no priority** or has **already been completed**.

Effectiveness Rating: Describes the effectiveness or success of your organization’s actions in this area. Enter:

1) A rating of “1” if your organization’s actions are **highly effective**.

2) A rating of “2” if your organization’s actions are **effective**.

3) A rating of “3” if your organization’s actions are **marginally effective**.

4) A rating of “4” if your organization’s actions are **ineffective**.

Once you have completed this section of the *ELLA HR Audit Worksheet*™ you will be able to identify the issues that need to be addressed and assign a priority for their completion. Items rated as “extremely important,” identified as “highest priority,” and given an “ineffective” rating should be the first issues addressed.

Strategic and Organization Description Profile™ – ELLA HR Audit Worksheet™

HR Audit Critical Components	Criticality	Priority	Effectiveness	Item Completed	Item Pending	Action to be Taken
<u>Activities</u>						
1) The organization’s human capital adds value to the organization						
2) The organization’s human capital makes the organization more competitive						
3) The organization has developed business related HR metrics						
4) The organization has promulgated HR management policies and practices and regularly communicates these policies and practices to employees, applicants, and other interested parties						
5) The organization periodically updates its HR management policies, practices, procedures, and personnel action forms						
6) The organization posts required and/or recommended posters, notices and statements						
7) The organization communicates on its employment related documents and its website that it is and EEO employer						

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HR Audit Critical Components	Criticality	Priority	Effectiveness	Item Completed	Item Pending	Action to be Taken
8) The organization properly identifies employees/independent contractors						
9) The organization properly identifies exempt and non-exempt employees						
10) The composition of the organization's work force is representative of the surrounding community						
11) Top management and HR regularly visit field locations						
12) The organization has created a complaint system						
13) The organization has updated job descriptions and performance standards						
14) The organization has developed an effective job performance management program						
15) The organization has an effective internal job posting procedure						
16) The organization has conducted training programs for supervisors, managers, recruiters, and key employees on HR management, EEO, its and diversity						

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HR Audit Critical Components	Criticality	Priority	Effectiveness	Item Completed	Item Pending	Action to be Taken
17) The organization monitors federal, state, and local employment laws, rules and regulations to ensure ongoing compliance						
Behaviors						
1) The organization’s HR management policies and practices are aligned with its business objectives						
2) The organization manages its human capital with the same level of sophistication and the same degree of management involvement as it does its other assets						
3) The organization has identified and regularly assesses its HR management and employment practices liability risks						
4) Top management has determined the level of HR management and EPL risk that is acceptable						
5) The organization regularly assesses its employment brand						
6) The organization’s corporate culture values and encourages compliance						

HR Audit Critical Components	Criticality	Priority	Effectiveness	Item Completed	Item Pending	Action to be Taken
7) The organization’s corporate culture values fair treatment, respect, and diversity						
8) The organization’s corporate culture contributes to employee satisfaction, commitment, and engagement						
9) The organization’s corporate culture values and encourages internal advancement and promotion						
10) Top management supports, the organization’s HR management and EEO policies and goals						
11) The organization makes a good faith effort to comply with federal, state, and local employment laws, regulations, and rules						
12) The organization makes a good faith effort to equitably compensate minorities, women, and veterans						
13) The organization ensures that minorities, women, and veterans have equal opportunity for advancement and promotion						

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HR Audit Critical Components	Criticality	Priority	Effectiveness	Item Completed	Item Pending	Action to be Taken
14) The organization ensures that it complies with EEO and other employment laws						
15) The organization assesses managers and supervisors on their performance in implementing HR management and EEO policies and practices						
16) Managers and supervisors are held accountable for their performance in implementing HR management and EEO policies and practices						
17) The organization ensures that its HR management and EEO policies and practices comply with federal, state, and local laws, regulations rules						
<u>Risks and Concerns</u>						
1) The organization’s HR management objectives, policies, and practices are not aligned with its strategic, business, talent management, EEO, and diversity objectives						

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HR Audit Critical Components	Criticality	Priority	Effectiveness	Item Completed	Item Pending	Action to be Taken
2) The organization's HR management and EEO policies and practices negatively affect competitiveness, innovation, revenue, and profitability						
3) The organization's HR management and EEO policies and practices negatively affect labor costs and cash flow						
4) The organization's HR management and EEO policies and practices expose it to governmental audits, loss of contracts, debarment, claims of discrimination, or other types liabilities						
5) The organization's HR management and EEO policies and practices negatively affect the organization's employment brand, talent management, employee morale, employee commitment, and employee relations						
6) Managers and supervisors apply the organization HR management and EEO policies and practices incorrectly, inconsistently, or discriminatorily						

HR Audit Critical Components	Criticality	Priority	Effectiveness	Item Completed	Item Pending	Action to be Taken
7) The organization’s HR management and EEO policies and practices prevent it from hiring and retaining top talent						
<u>Controls</u>						
1) Reports are available on the organization’s HR management performance						
2) Management monitors reports on HR management activities and outcomes, assesses the incidence of compliance failures, and takes appropriate action						
3) The organization regularly monitors its employee numbers, locations, and other factors that affect the applicability of federal, state, local employment laws and regulations						
4) The organization monitors the composition and deployment of its human capital to ensure align with current business imperatives and long-term business strategies						

HR Audit Critical Components	Criticality	Priority	Effectiveness	Item Completed	Item Pending	Action to be Taken
5) The organization monitors the labor cost and cash flow implications of its human capital related decisions						
6) The organization’s employment practices and outcomes are regularly reviewed by legal counsel						
7) The organization regularly reviews its government contracts to ensure ongoing compliance						
8) The organization assesses the recruitment activities and outcomes to ensure alignment with talent management objectives						
9) The organization reviews its new hires promotions, compensation decisions, and termination results every six months						
Outcomes						
1) HR management and EEO policies and practice outcomes indicate alignment with the organization’s business strategies, imperatives, and budgets						

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HR Audit Critical Components	Criticality	Priority	Effectiveness	Item Completed	Item Pending	Action to be Taken
2) HR management and EEO policies and practice outcomes indicate compliance with Title VII and other federal, laws, regulations, rules, and guidelines						
3) Business, talent management, EEO, and diversity objectives have been met						
4) Surveys of applicants, employees, and managers indicate an understanding and acceptance of the organization's HR management and EEO policies and practices						
5) Surveys of managers and supervisors indicate support for the organization's HR management and EEO policies and practices						
6) Executive interviews indicate a positive response concerning new hire quality, labor cost controls, and productivity						