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THINKING STRATEGICALLY ABOUT HIRING

There is a reason why the concept of Strategic Human Resource Management exists, and why organizations like the Society of Human Resource Management (SHRM) advocate for it. In short, the work of recruiting, educating, and managing the performance of human beings should be nothing short of strategic. And it is no coincidence that recruiting is at the beginning of that list. Because these days, if you are not strategic, you lose out on the best candidates, or worse, you end up with the employee you did not want.

Nearly every article you get your hands on these days on the subject of recruiting defines the need to be strategic, and it will provide a plethora of strategies and processes to be effective. The best of these articles will, at every turn, implore you to be timely in the process. You snooze, you lose (or something like that).

HR Answers feels very strongly about being strategic in everything HR, and in particular in recruiting. Why? First some statistics to help re-draw the economic picture you keep hearing about. Oregon's unemployment rate for June 2018 stands at 3.8 %. The state's fastest growing regions, Portland (metro) and Bend are each at 3.4 %. Conventional wisdom indicates that anything below 4% is "unemployable."

Second, this last week the Oregon Department of Employment published its most recent research on economic growth and its effect on employment. [Here is a link to that report.](#) The report predicts the state will see the growth of 236,000 jobs per year into the year 2027. Yes, you read that right. Even if it is only half correct, that is a sizeable lift for any organization struggling presently to recruit, hire and retain the best possible employees.

For Washington employers, the news is very similar. In 2017, Washington led the nation in real GDP growth and personal income growth. The unemployment rate is below 4%. Washington exports are rising and manufacturing is growing. The state is forecasting continuing robust growth in both personal income and in newly created jobs. For more detail, go to the [Washington Economic Report](#) that is generated each quarter.

It is important to keep in mind that all of the components of an effective recruiting strategy and recruiting process will help you navigate this economic news. And yet, every day we hear from employers that they continue to struggle. And at the same time, we hear from prospective candidates that the organization took too long, and/or rarely communicated with them during the process. And this coming from some of the largest most sophisticated employers in the two states. Again, you snooze, you lose.

We are not advocating that you carelessly fly through the process just so you don't lose a candidate to the competition. But you must treat all potentials as your most cherished customers. Constantly keeping them informed. The following is some wisdom taken from a recent SHRM article:

"Keep in touch. One of the greatest challenges is keeping applicants interested so that they'll be available when you are. The best applicants usually have lots of choices, and they respond best to those companies and hiring managers who communicate effectively. One organization created a "Mother Hen" program (think of a hen sitting on and keeping her eggs warm until they're ready to hatch). It had multiple strategies for keeping in touch, letting applicants know where they were in an effort to keep them interested. They assured applicants that they were available to answer any questions or react to possible changes in their status. This was not just for HR's use; hiring managers also have to develop and nurture relationships with their potential employees. If the manager and applicant click, then the applicant may be willing to engage on another opening with that manager."

And more wisdom from the recruiting firm – Greenhouse:

"Make decisions quickly - Once interview feedback is collected, make a decision immediately. Should you continue forward with the candidate or reject them? In hiring, any slack should be on the candidate's side—every part of the process that you have control over should constantly be moving towards a rejection or offer."

The moral of the story, be strategic, create your plan, work your plan, and keep all your potentials informed on a more than regular basis. Moving forward with all appropriate speed can move you to the front of the line in the candidate's mind. And just think of the brownie points you will score as they think about their application process and believe that the rest of their employment with you will be as smooth as getting the job was.

WHEN IN DOUBT...DON'T!

One of the little-known risks an employer can have comes when an HR practitioner calls a friend in HR at another organization and simply asks, "What is your pay range for (fill in the blank)?" Or "We are hiring a new Sales Manager - can you give me a ballpark figure for how much you pay yours?" These sound like such simple requests but they may lead to a criminal prosecution. The US Department of Justice has increased their prosecution of wage-fixing violations. Just like price fixing would be a violation of anti-trust laws, so is wage fixing. It is believed that employers can keep wages down if they share information and that results in a more standardized pay level for employees in different organizations.

The Antitrust Guidance for Human Resource Professional put out by the Department of Justice Antitrust Division and the Federal Trade Commission is an excellent source of information and advice regarding these regulations. The purpose of the 11-page document is to reinforce the fact that Antitrust laws establish the rules of a competitive employment marketplace. The material can be accessed [here](#).

A more appropriate way to gather information is the purchase of salary surveys or if you don't want to purchase them yourself, we keep a comprehensive library of surveys and can pull together quality, timely, and job specific information for your use. If you prefer, and are located locally, then you can rent time in our library to research through the surveys yourself.

EMPLOYERS REJOICE!!

If you are hearing applause and you don't know where it is coming from; it may be employers near your work location cheering for the news coming out of the new 5-member National Labor Relations Board (NLRB). The Board make-up changes whenever there is a change in the administration. The five members are comprised of three people of the same party as the President's and two members of the other party. This typically means a change in decisions that shifts from more employee-friendly to more management-friendly.

During the eight years of President Obama's administration, the NLRB rulings were restrictive for employers, particularly in the area of managing employee communications and behaviors that could be cause for disciplinary actions. The issue is about the rights of employees under Section 7 of the National Labor Relations Act. Section 7 of the National Labor Relations Act (the Act) guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities." Anything that chills the employee's activities under this provision is not allowed. The conflict comes when different Boards interpret this provision in a narrow construct or in a broad manner.

A new document describing what is now allowed was just published on June 7th. That document from the Labor Relations Update can be found [here](#). The new approach was revealed in the recent ruling on *The Boeing Company 365 NLRB No. 154 (2017)*. In the *Boeing* decision, the Board replaced the 2004 ruling "construe" standard — which made official handbook rules unlawful if they "could" be interpreted as interfering with employee rights protected under Section 7 of the National Labor Relations Act (NLRA) — with a new test for the Board to use when evaluating the validity of employer rules, policies and handbook provisions under the NLRA.

Until *Boeing*, employers faced the difficult task of creating reasonable rules for workplace conduct, such as policies and training sessions to promote respectful behavior, without violating federal labor law. For instance, in 2011 (*2 Sisters Food Group*) and 2014 (*Hills & Dales General Hospital*), the Board found that the employers violated federal law when they advised its employees to "work harmoniously" and conduct themselves in a "professional manner." And in what must have been the most employee-friendly case of all times, the *William Beaumont Hospital*, the Board found the employer violated federal law for having a policy that stated doctors and nurses should foster "harmonious interactions and relationships."

Fortunately, the new ruling from NLRB is vastly different. Policies that previously were not allowed will be deemed lawful as the Board will evaluate "the nature and extent of the potential impact on NLRA rights and legitimate justifications associated with the rule." They will evaluate the rules considering legitimate justifications the employer is able to articulate associated with the rule. In other words, if

Editor: Judy Clark, CPC, SPHR, IPMA-CP: Advantage is published monthly and is designed to provide information on regulations. HR practices and management ideas and concerns. The intended audience is managers, supervisors, business owners, human resource and employee relations professionals. If you have questions about the content, an opinion about the information, or questions about your subscription, please give us a call at (503) 885-9815 or e-mail info@hranswers.com.

the employer has a reasonable requirement for prohibiting a particular behavior or type of comment, then it may not be seen as infringing on the employee's Section 7 rights. The NLRB General Counsel's memo describes three areas that will be considered in future rulings. Those three are Rules That Are Lawful to Maintain, Rules Warranting Individualized Scrutiny, and Rules That Are Unlawful to Maintain. Further, it provides examples of specific workplace rules, many of which are commonly found within employee handbooks, that fall in the "Lawful" category. This should be especially helpful to employers. If you have questions about what is or isn't permitted, please feel free to give us a call.

IT MUST BE IN THE WATER

It seems as though something is causing employers to have questions about the Americans with Disabilities Act (ADA) now. The law has been around since 1990 so it is a bit of a mystery that there is so much attention to it recently. Many of the calls we get now center on employee situations regarding ADA and the newsletters and postings we receive have increased their coverage of ADA. One of the aspects of ADA that seems to be at the heart of this renewed attention is the Interactive Process. So here is a brief primer on that subject.

The ADA requires that the employer engage in an "interactive process" with an individual who requests or needs consideration for "reasonable accommodation." Because this interactive process often involves front-line supervision in the communications, it is important that supervisors are trained in how to recognize a potential ADA situation, then know what obligations the employer has in going through the interactive process. In addition, it will be prudent for an organization to have specific questions ready for supervisor use should an employee allege a potential disability.

Identifying a mental or physical condition of the individual that requires the ADA Interactive Process to be followed. This identification can occur in a variety of contexts:

During the course of an interview with an applicant.

During a job performance discussion or evaluation with an employee. It is recommended that the employment policies dealing with communication include a phrase encouraging employees to proactively raise job performance issues or concerns with their supervisor.

During the course of a corrective action discussion with an employee. It is recommended that the supervisor ask the employee for his or her reasons for failing to meet job performance expectations that give rise to corrective action.

Management should be instructed on how to effectively document comments or input from employees who raise the potential existence of an impairment or propose reasonable accommodation options. Having the employee fill out a form that identifies what s/he thinks would be reasonable accommodations is helpful. However, an employee cannot be required to complete the form. If the employee is unable or unwilling to complete that form then the employer can do it on the basis of a conversation with the employee.

Requiring that the employee have medical documentation establishing both a medical condition that falls under the ADA definition of a disability and the need for reasonable accommodation. This form should include a solicitation of ideas for reasonable accommodation, but also indicate that mitigating factors will not be a consideration.

The Interactive Process is not something that can be one and done. It requires give and take on the part of both the employer and employee (or applicant). It is an ongoing conversation about what might be an accommodation. Assume for a moment that the employee says that they are having a hard time working because of the noise in the workforce. They suggest being moved to an office with a door to minimize sound. The employer may believe this is extravagant so they say they can't do that, but they can provide noise cancelling headphones for the employee's use. That isn't the answer the employee advanced, but it is an answer that addresses the concern and would be considered a reasonable accommodation.

The law says that the accommodation selected doesn't have to be the one the employee requested, it simply has to be reasonable and be something that will "accommodate" the employee's medical condition. The example above only has two accommodation ideas, but in some cases, the conversation may go back and forth three to four times. Writing the exchanges down means you have a record of the Interactive Process. This is one of the biggest failings of employers – the failure to document any conversations about accommodations. If the end result of these conversations is that there is no reasonable accommodation, then the documentation shows that the employee and employer engaged in an appropriate Interactive Process even though no reasonable accommodation could be identified. In court cases, there are a couple of key areas. The first is the failure to have documented the decisions and activities that the employer took to reach a conclusion. The second one is thinking that they know what the outcome should be so they skip over processes and documentation to making a decision without involving the employee in any conversation or decisions. These failures lead to court cases; and court case can lead to seriously large financial expenses.

WASHINGTON HEADS-UP

Washington employers need to start collecting premiums for the Paid Family and Medical Leave benefits on January 1, 2019. This new program which is effective January 1, 2020 will allow all employees who have worked a total of 820 hours in the previous year to take up to 12 weeks of paid leave to care for a family member, to care for a newborn, or to deal with a qualifying military exigency. The Washington Employment Security department is working on the rules that will guide employers in administering this program. They have divided the rule making process into four stages, and they are currently working on stage three. While it may feel as though this is a way off, employers need to know what the provisions are so that they can begin to plan for administration of this new requirement and can begin thinking about employee communication. Most important however, is budgeting for the costs that will apply in five months. We suggest visiting the [Washington State](#) website for more information about this new obligation.

OREGON PAY EQUITY ACT UPDATE

We will provide an update on the new Oregon Pay Equity Act in each of the remaining Advantage issues in preparation for the effective date of January 1, 2019. The Bureau of Labor and Industries is hard at work on the proposed rules which will guide employers in meeting the new requirements. But employers do not need to wait for those rules because by the time they are finalized, there may not be sufficient time to do all the needed work by the effective date. Employers would be wise to get started now. The first step that employers need to take is to build their own definitions of the factors the state decided on. Only one factor, Working Conditions was defined in the law. That definition is “Working conditions includes work environment, hours, time of day, physical surroundings and potential hazards encountered by the employee.” The other four factors require employers to create their own definitions. The four factors that need defining are:

- Knowledge
- Responsibility
- Effort
- Skills

While it may seem that it would be better for the state to have provided some guidance on the definitions, the way they did this is really better for employers. The definitions that might suit a heavy steel manufacturing organization are likely to be substantially different from a day spa employer. So, each organization needs to determine its own definitions for these four factors. HR Answers, has developed definitions of these four factors as a place to start with the work we are doing for clients. They can then edit these or revise them to determine what definitions will work for them best.

The second thing that can be done now without the completion of rules by BOLI, is a review, and probably revision, of the job descriptions. To determine if jobs are of comparable character, the employer needs the information relevant to each job so that it can be compared to the five factors the state has identified. In most cases, this will lead to additional materials being included in the job descriptions. Getting these two tasks done does not have to wait until the rules are proposed, and employers who get started on that right away will find themselves in a better position when it comes time for the next steps.

HR Answers has been actively working with employers to begin this process for them. Should you have questions about these two first steps or want to talk with us about having some help on part or the whole process, please just let us know.

HR QUESTION OF THE MONTH

Last month’s question was: In the year 2038 (twenty years from now) what percentage of current jobs are thought to be automated? The answer is 47% of jobs are likely to be automated 20 years from now.

The July question is: How much do employees who use a Flexible Spending Account (FSA) for any purpose save on their taxes?

Possible Answers: ___ 25-49 cents ___ 15-31 cents
 ___ 10-27 cents ___ 61-74 cents

Look for the answer next month.

CLIENT ACCOLADES

This month we have the largest Client Accolades column ever! We are so proud of the contribution that our clients make to their employees and to the communities in which they work. So here are the specifics:

- Katherine Schultz of GBD Architects who is currently the Chair of Portland's Planning and Sustainability Commission was featured in the Portland Business Journal talking about the changes she has seen in Portland where she has spent all her life. Way to go, Katherine. Your thinking and planning bodes well for other Portland-area projects!
- Cura Cannabis grabbed the headlines with news that they had received huge funding from their most recent round of capitalization. They were also identified as the fastest growing firm of all time as noted by the Portland Business Journal! Given the growth than many Oregon organizations have experienced, this is truly a major accomplishment! We are so proud of you!
- OHSU has landed \$600 million for AIDS vaccine research. This accomplishment is good for OHSU, but it is likely better for all the patients they treat and all the future individuals that may not ever contract AIDS because of their efforts. Best wishes to OHSU and all the researchers working on this project!
- Mt. Hood Community College just received an award for being one of the most military friendly institutions for 2018-2019. They waive admission fees, award credit for military training and experience, and offer mentoring services to all recently discharged vets and those currently serving. Great way to honor those who serve to protect us all!!
- The list of the Largest Private Employer provided us a wealth of companies to congratulate. A total of 26 of our clients made that list. We offer our warmest thoughts and best wishes to:
 - Andersen Construction Co.
 - Harder Mechanical Contractors Inc.
 - Walsh Construction Co.
 - A-dec Inc.
 - Stoel Rives LLP
 - Willamette Dental Group
 - Plaid Pantries Inc.
 - R&H Construction
 - Shari's Management Corp.
 - Bremik Construction
 - Emerick Construction Co.
 - Charter Mechanical Contractors Inc.
 - Todd Construction Inc.
 - Robertson & Olson Construction Inc.
 - James E. John Construction
 - Yorke & Curtis Inc.
 - The Aldrich Group of Companies
 - Cura Cannabis Solutions
 - CTL
 - Certified Languages International LLC
 - Teufel Landscape
 - Beaverton Foods
 - GBD Architects Inc.
 - TerraFirma Foundation Systems
 - HawkSoft Inc.
 - EdgeLink LLC

HR BY THE NUMBERS

- The top ten causes of employee disability found by Employee Benefit News are:
 - o Cancer, including all types
 - o Chronic Back Disorders
 - o Injuries from falls
 - o Cardiovascular Diseases
 - o Joint Disorders
 - o Pregnancy
 - o Injuries from accidents, 90% of which occur off work
 - o Arthritis
 - o Digestive Systems Disorders
 - o Breast Cancer

These medical issues are the primary reasons that employees take advantage of any short- or long-term disability insurance that the employer provides.

- The gender gap shows up in a variety of ways. According to an April article in Modern Survey 41% of women under the age of 25 have a positive outlook on their future career growth. For men under 25, their positive feelings about career advancement are reporting in at 53%. These number are strongly affected by their current employer and what they see as a commitment to training and educating employees for greater future responsibilities.

- A recent study done by Kaiser Health Plan found that 90% of employer leadership said that employee health had significant influence on their decisions about what benefits to offer and what message to send to employees about what leadership cared about.
- A recent survey of 1,200 nonprofit leaders found that 20% said they were very confident that they had the leadership abilities to enable their team to achieve its goals. About 70% said that they were going to be leaving their position within the next five years. In a related finding, only 20% of the surveyed leaders had a formal succession plan for their own or other leadership positions. That report said that nonprofits are the third largest workforce (11.4 million jobs) behind retail and manufacturing. One of the key conclusions was that organizations with a strong leadership development programs were able to respond rapidly to unpredictable situations, while organizations without a conscious orientation to developing leadership skills and understanding were far less likely to handle emergent issues. The current turnover rate of nonprofit leadership is about 25% and it significantly impacts the nonprofit organization's ability to survive especially when their ability to attract donors in a fluctuating economy is considered.

THOUGHTS TO THINK ABOUT

Summer has set in with its usual severity.

~Samuel Taylor Coleridge

People don't notice whether it's winter or summer when they're happy.

~Anton Chekhov

What good is the warmth of summer, without the cold of winter to give it sweetness.

~John Steinbeck

Baseball is the only field of endeavor where a man can succeed three times out of ten and be considered a good performer.

~Ted Williams

Your Business clothes are naturally attracted to staining liquids. This attraction is strongest just before an important meeting.

~Scott Adams

No one can whistle a symphony. It takes a whole orchestra to play it.

~H.E. Luccock

Individual commitment to a group effort — that is what makes a team work, a company work, a society work, a civilization work.

~Vince Lombardi

Weekends are a bit like rainbows; they look good from a distance but disappear when you get up close to them.

~John Shirley

I try to take one day at a time, but sometimes several days attack me at once.

~Jennifer Yane

IT IS FINALLY SUMMER, PLAN TO STAY COOL

The Oregon Health Authority offered the following tips for staying safe and healthy during extreme heat. Employers need to think about employees and their working conditions. High heat saps employee energy, in addition to being a serious cause of some health concerns. Make sure employees know the warning signs of heat exhaustion and that you are taking necessary precautions to ensure employee safety. You may wish to assign a couple of workers to help you keep an eye on employees who are working in situations where they may experience heat-related issues. The things to consider are:

- Stay in air-conditioned places when temperatures are high, if possible.
- Limit exposure to the sun from 10 a.m. to 4 p.m. when UV rays are strongest.
- Try to schedule activities in the morning and evening.
- Open windows to allow fresh air to circulate, especially during morning and evening hours, and close shades on west-facing windows during the afternoon hours.
- Use portable electric fans to remove hot air from rooms or draw in cooler air.
- Wear loose-fitting clothing to keep cool and protect your skin from the sun.
- Use cool compresses, misting, and cool showers and baths.
- Avoid hot foods and heavy meals; they add heat to the body.
- Never leave infants or children in a parked car. Nor should pets be left in parked cars--they can suffer heat-related illness, too.

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- Dress infants and children in loose, lightweight, light-colored clothing.
- Use sunscreen with at least SPF 15 when going outside.
- Stay hydrated - regardless of your level of activity, drink plenty of fluids, even if you are not thirsty, and especially when working outside.
- Avoid alcohol or liquids containing large amounts of sugar.

Stay informed by:

- Keeping up-to-date on the temperature and heat index when planning your activities so you can find ways to stay cool and hydrated. The heat index measures how hot it feels outside when factoring in humidity with the actual air temperature.
- Learning how to prevent, recognize, and treat heat-related illnesses. Know the warning signs of heat stroke, heat exhaustion, heat cramps, sunburn and heat rash, and how to treat and prevent them.

FOR YOUR CALENDAR

Open up your Daytimers, Outlook, and all those Smartphones. The following is a look at upcoming events and workshops, special days, and other diverse and fun activities you will want to be aware of and schedule. **To register for our workshops, go to [HR Answers Events](#), or email your registration form to info@hranswers.com.**

JULY

Month of Grilling, Hot Dog, Picnic, Unlucky Month for Weddings, July Belongs to Blueberries, Cell Phone Courtesy, Culinary Arts, and World Water Color

- July 17 Tattoo Day
- July 19 Daiquiri Day
- July 21 Toss Away The “Could Haves” And “Should Haves” Day
- July 25 HR Lunch Bunch - Chemeketa Small Business Development Center - Salem
[Creating a Learning Culture/Organization](#)
12:00pm – 1:00pm
- July 26 National Coffee Milkshake Day
- July 28 National Dance Day

Coming Up:

- Aug. 1 HR Lunch Bunch – Portland/Tigard
[Pay Equity](#)
12:00pm -1:00pm
- Aug. 9 Free Oregon Pay Equity Seminar – Medford
[Pay Equity Medford](#)
12:00pm -1:00pm
- Aug. 29 HR Lunch Bunch – Chemeketa Small Business Development Center – Salem
HR Department of One
12:00pm -1:00pm

Planning Ahead:

- Sept. 11 HRA Workshop – HRA Office – Tigard
[Take Control of Your Time and Get the Right Things Done!](#)
8:30am - 12:30pm
- Sept. 13 HRA Workshop – HRA Office – Tigard
[Oregon Pay Equity- Job Profiling](#)
8:30am - 12:30pm
- Sept. 18 HRA Workshop – HRA Office – Tigard
[Strategic Human Resource Management](#)
8:30am - 12:30pm
- Sept. 25 -
Nov. 13 HRA Workshop Series – HRA Office – Tigard
[Supervisory Success - Fall 2018](#)
8:30am – 12:30pm

View more details and register for our workshops and luncheons on our website at hranswers.com.

Information and advice offered through Advantage should not be construed as legal opinion. The material contained herein will not apply to all circumstances or to all organizations. Use it as a resource and reference. Should you feel legal advice is required, please consult with your corporate counsel.

ON MY SOAPBOX

There are behaviors the we have been told to refrain from engaging in. Our parents were likely the first ones to do that followed by school teachers and finally, maybe, employers. Other sources of information come from laws and regulations; and some come from unstated agreements that we simply know not to do because it disrupts the fabric of our communities. Our lives are full of prohibitions.

Every once in a while, we get a perfect example of what not to do. This morning on TV, there was an FBI agent appearing before a combined set of House Committees. His testimony included talking about his text messages to a “colleague.” When asked when he was sending these texts if he ever thought that they would be seen by others, he answered simply, “No.”

Many of us have been counseled to be aware that our messages (emails, IMs, and texts) at work are not owned by us but are instead owned by our employers. Granted, our messages might not surface unless something caused the organization to read through the collect messages. But just as the Agent thought his opinions and electronic messages would never be seen, ours could surface as well.

We all have opinions that might vary from the organizational perspective. And, we are entitled to have these opinions. But we must not let them color our decisions or the productivity of our work. The Agent agreed that he could understand how readers of his personal exchanges on a workplace network could cause someone to believe that he was biased and that the bias could influence his decisions or actions.

So, what are the take-aways of this situation? There are a few options for us to consider. First, it is inappropriate to use the employer’s network for personal exchanges. Second, if we ignore number one, then we have to be ready to be embarrassed when the messages are discovered. Thirdly, we have to be ready to be called to account for why we did what we did and how can we prove that our feelings didn’t impact the work that we did. Lastly, we have to recognize that our peers, our subordinates, and the managers above us likely have a decreased respect for us and our credibility. This is a heavy weight to bear, but it is all because we violated one of the prohibitions. And we didn’t violate it because we weren’t aware of it. We were aware, and we violated it anyway. We thought we would get away with it. The example this morning on TV teaches us that there are unpleasant consequences to our actions. There is an axiom that says something like “Look before you leap.” That is excellent advice and it applies to many situations. But if you look at this and think that it is just about conducting personal conversations using the employer’s systems, you may have missed the broader application. The true message of this is when using the employer’s systems, it better be about work topics. This example may assist employers in telling employees how the rule in place really serves to protect them, as well as the employer.

- Judy Clark, President



ANSWERS, Inc.
“Whatever the Question”

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WWW.HRANSWERS.COM