



# **Employee Engagement and Compliance - New Guidance to Kick Off 2021**

January 28, 2021

# BPM



**Nancy Alley: PHR, Senior HR Consultant, BPM LLP**

Nancy has over 25 years of Human Resources experience working with dynamic and ambitious companies. Her areas of expertise include recruitment and retention, legal and compliance, employee relations, diversity, equity and inclusion, career development and training, and benefits and compensation. Nancy is a collaborative leader who enjoys coaching executives and team members in all areas of Human Resources best practices to create and protect a company culture where all employees feel safe, challenged, and motivated to reach their fullest potential.



**Stacy Litteral: Managing Director, Advisory, BPM LLP**

Stacy has over 20 years of Human Resources and people strategy experience. She has an extensive background in all areas of HR including compensation, benefits, employee relations and training, however her passion lies in the area of performance management and strategic alignment. Stacy believes no matter how large or small an organization is, people are the foundation of all success, and that it is necessary to connect individuals to organizational goals in order to meet and exceed objectives.



**Lauren Erickson: Area Vice President, Risk Management, Nonprofit Division, G2 Insurance**

Lauren specializes in risk management and property and casualty insurance coverage placement for mid-to-large size arts and culture, social service and animal advocacy, educational, environmental, and advocacy organizations. For more than 12 years, Erickson has been solving risk-related challenges for nonprofit organizations located in the U.S. and beyond, and was named by Risk & Insurance magazine as one of six 2020 national Nonprofit Power Brokers.

# What We Do

## HR and People Services

BPM's HR and People Services team helps companies realize their vision through consulting services and strategic initiatives that harness the untapped power of people and help leaders scale in a well-planned, sustainable way.

Organizations are challenged with ever-changing compliance requirements and an increased need for accountability. Whether you're an emerging organization, growing at stealth speed or preparing for an M&A transaction, our team can elevate your people function to new heights and transform your HR function to a strategic asset, focused on execution of your organizational strategy.

As an HR consulting partner, we will regularly spend time onsite while getting to know your unique business challenges and culture.

### Growth Stage Consulting Services:



# Agenda

## Part 1: Compliance

- Cal/OSHA Emergency Temporary Standards (ETS)
- FFCRA
- AB685 Infection Prevention Standards / Onsite OSHA requirements
- SB1159 WC Presumption
- Vaccine Guidance

## Part 2: Workers' Compensation

## Part 3: Employee Engagement

- Trends and Priorities

# Part 1: Compliance

# Cal/OSHA Emergency Temporary Standards

**OSHA released new Emergency Temporary Standards that took effect on November 30, 2020**

Requires employers to create a detailed written COVID-19 prevention program, that includes:

- Communication to employees about the employer's COVID-19 prevention procedures
- Identify, evaluate and correct COVID-19 hazards
- Physical distancing of at least six feet unless it is not possible
- Use of face coverings
- Use engineering controls, administrative controls and personal protective equipment as required to reduce transmission risk
- Procedures to investigate and respond to COVID-19 cases in the workplace
- Provide COVID-19 training to employees
- Provide testing to employees who are exposed to a COVID-19 case, and in the case of multiple infections or a major outbreak, implement regular workplace testing for employees in the exposed work areas
- Exclusion of COVID-19 cases and exposed employees from the workplace until they are no longer an infection risk
- Maintain records of COVID-19 cases and report serious illnesses and multiple cases to Cal/OSHA and the local health department, as required

# Cal/OSHA Emergency Temporary Standards

## In the event of a positive case:

- Employers must identify the last day and time the positive case (employee) was in the workplace and provide notice of potential exposure within one business day
  - Offer testing to employees potentially exposed
  - Provide potentially exposed employees with information on benefits they may be entitled to such as workers' compensation, paid sick leave, etc.

# Cal/OSHA Emergency Temporary Standards

## Excluding employees from the workplace:

- **Symptomatic Case**: Cannot return to work until all of the following conditions met:
  - 1) at least 24 hours have passed since a fever 100.4 or higher has been resolved without use of fever reducing medications;
  - 2) COVID-19 symptoms have improved; and
  - 3) at least 10 days have passed since symptoms first appeared
- **Asymptomatic Case**: An employee who tests positive but shows no symptoms cannot return until 10 days have passed since the specimen was taken for the employee's first positive test
- **COVID-19 Exposure**: Follow current CDPH recommendations. Current recommendations allow an employee to return from a COVID exposure to the workplace after the 10 days from last exposure if the employee remains asymptomatic the entire time

# Cal/OSHA Emergency Temporary Standards

## In the event of an “outbreak”:

- If there are 3 or more COVID-19 cases in a the workplace in a two-week period, employers must report to the local health department within 48 hours, providing notice of any subsequent cases
  - Cal/OHSA regulations require employers to provide testing at no cost to all employees present at the “exposed workplace” immediately after an outbreak, and then again one week later.
  - Exclude positive cases until safe return
  - Investigate possible workplace factors that may have contributed to “outbreak”
  - Review current policies, procedures and controls and revise as necessary to address any hazardous conditions
- “Major Outbreak” is defined as 20 or more cases in a 30-day period
  - Provide twice a week testing at no cost to all employees at the “exposed worksite” during a major outbreak
  - Testing must remain in effect until there are no new cases of COVID-19 detected in the workplace for a 14-day period.
  - Upgrade mechanical filtration units or highest grade filter unit will allow
  - Determine whether to halt some of the operations while correcting hazards; and
  - Implement any other measures Cal/OSHA requires

# Cal/OSHA Emergency Temporary Standards

## Record Keeping Requirements:

- Must keep record of all COVID-19 cases including employee names, contact information, occupation, location where the employee worked, last day in workplace, date of the positive COVID-19 case
- Medical information must be kept confidential

# Families First Coronavirus Response Act - FFCRA

## January 2021 Update:

- Federal, State and Local Emergency Paid Leaves Expired on December 31, 2020
- FFCRA was not extended
- All CA and local sick leaves expired along with it
- Employers can voluntarily elect to continue to provide paid sick leave or medical leave and take the federal payroll tax credit through 3/31/2021
- Unclear whether employers can choose to provide one and not the other
- Employers with 500 or more employees have no obligations (since FFCRA didn't apply to them and no state or local requirements were extended)
- More guidance expected

# AB685: COVID-19: Exposure and Notification

## January 2021 Update:

- The definition of “outbreak” in AB685 differs slightly than the OSHA regulations
- The state requirement defers to the CDPH definition of an outbreak defining it as 3 cases in a 14-day period. The regulation broadens the definition by including a place of employment “identified by a local health department as the location of a COVID-19 outbreak”
- COVID-19 workplace exposure notifications are triggered when you are notified that a qualifying individual was present at your worksite during their infectious period
- Qualifying Individual meets one of the following:
  - Has a positive test for COVID-19
  - Is diagnosed with COVID-19 by a licensed health care provider
  - Is ordered to isolate for COVID-19 by a public health department
  - Dies due to COVID-19, as determined by a public health department

# AB685: COVID-19: Exposure and Notification

## Continued:

- Worksite means the building, store, facility, agricultural field, or other location where a worker worked during the infectious period. It does not apply to buildings, floors, or other locations of the employer that a qualified individual did not enter. In a multi-worksite environment, the employer need only notify employees who were at the same worksite as the qualified individual
- The infectious period depends upon whether the COVID-19 case develops symptoms
  - **Symptomatic:** Infectious Period begins two days before they first developed symptoms and ends when 10 days have passed since the symptoms first appeared, and at least 24 hours have passed with no fever without the use of fever reducing medications
  - **Asymptomatic:** Infectious Period begins two days before the date of the first positive test specimen was taken and ends 10 days after that date

# AB685: COVID-19: Exposure and Notification

## Upon identifying a COVID-19 case in the workplace, you must:

Provide notice to your employees and the employer of subcontracted workers of potential COVID-19 exposure, if they were at the same worksite as the qualifying individual during the their infectious period. You may share:

- Dates of the possible exposure, but should not share information that could identify the affected individual. Provide to Labor Representative, if any
- Provide potentially exposed employees with information about COVID-19 benefits under federal, state and local laws. This includes workers' compensation, company sick leave, state-mandated leave, supplemental sick leave, negotiated leave, and anti-retaliation and anti-discrimination protections. You must also provide this information to labor representatives, if any
- Inform all employees and the employer of subcontracted workers of your disinfection plan and safety plan for the worksite, in accordance with CDC guidelines. You must also provide this notice to labor representatives, if any
- Notice must be provided within one business day of receiving notification of potential exposure
- Notice must be in writing and in both English and any other language understood by majority of employees
- Notice can be delivered by hand, emailed, sent via text message, or any other written manner that can reasonably be anticipated to be received by the employee within one business day
- Retain notices for at least 3 years

# AB685: COVID-19: Exposure and Notification

## Reporting Outbreaks to the Local Health Department:

- You must report COVID-19 outbreaks within 48 hours
  - Report to the local health department in the jurisdiction where the worksite is located
- Information to be reported:
  - Information about the worksite-name of company, business address and North American Industry Classification System (NAICS) code
  - Names and occupations of the workers with COVID-19
  - Additional information requested by the local health department as part of their investigation

# SB1159: Workers' Comp Presumption

- Employers with 5 or more employees “knows or reasonably should know” that if an employee tests positive for COVID-19, the employer must inform their workers’ compensation carrier within 3 business days of the following:
  - An employee tested positive,
  - The date when the employee tested positive,
  - The address of the employee’s worksite (during the 14-day period preceding the positive test), and
  - The highest number of employees who reported to the worksite within 45 days of when the employee last worked
- This requirement does not apply to employees that are working from home or for the following class of employees:
  - Active firefighters, peace officers, fire and rescue services coordinators;
  - Employees who provide direct patient care or a custodial employee in contact with COVID-19 patients who work in a health facility. Other employees of health facilities if the employee had contact with a patient who tested positive for COVID-19 in the past 14 days;
  - Registered nurses, EMTs and paramedics;
  - Employees who provide direct patient care for a home health agency;
  - In-home supportive services providers

*NOTE: Employers should consult with their workers’ comp carriers and legal counsel with any specific questions about this new reporting requirement*

# Vaccine Guidance

## Can employers require employees to be vaccinated?

- While it is best to consider a highly recommended but voluntary vaccination program, employers must consider what is best for their organization
- Employers can require employees to be vaccinated with certain considerations. Employers must show the vaccine is a job-related necessity for each position of those employees being asked to receive the vaccine
- If work is being done onsite, the employer must establish a direct threat of causing a significant risk of substantial harm to other employees in order to require employees to receive a vaccine

# Vaccine Guidance

## **What choices do employees have regarding vaccination?**

- If a mandatory vaccination program is implemented, employees may choose to either be vaccinated onsite or be vaccinated by a provider other than the vendor used by an employer. Proof of vaccination from that provider, but no other health information, should be accepted by the employer

## **What information can be collected from employees?**

- Employers or vendors who complete vaccine administration must complete a medical screening prior to the administration of the vaccine
- To maintain compliance with the Americans with Disabilities Act (ADA), this screening must not contain questions about health conditions other than COVID-19
- While the administration of the vaccination itself does not violate any considerations of the ADA, no other health history should be collected

## **What accommodations must employers make during vaccine administration?**

- Employers should make a reasonable attempt to allow vaccinations to be administered during employees' normal working hours, without requiring employees to utilize lunch or break periods
- If employees are required to be vaccinated outside of their regular schedule, employers are subject to applicable wage and hour regulations

# Vaccine Guidance

## What else should employers consider?

- Certainly, whether to require vaccinations or not is a difficult decision for employers to make. There is no “one size fits all” way to make this decision. It depends on what is best for your industry and organization. Employers should consider the risk factors for their overall population
- How could your employees, vendors, service recipients, and clients be affected by our decision?
- Is there an ongoing ability for our employees to perform essential operations remotely?
- What capacity do we have to consider accommodation requests?
- Can we provide a vaccination program and ensure employees' data privacy?
- What are our requirements under collective bargaining agreements?
- What potential costs would we have under workers' compensation if an employee contracts COVID-19 while working?
- We will continue to monitor this situation as it unfolds and provide further information as it becomes available. Please do not hesitate to reach out to us with further questions or to discuss this matter

# **Part 2:**

# **Workers' Compensation**

# Remote Employees Ergonomics Check-In:

- Employees working from home can still incur a Workers' Comp injury
- Virtual Assessments
  - Workers Compensation carrier
  - “Train the Trainer”
- Equipment needs
- Monthly Ergonomic Tip

# COVID-19 Workers' Compensation Tips and Updates

- Remote Employees Class Code
- Ex Mod Calculation
- Out-of-State Workers
- Workers' Comp Reporting Obligations: SB 1159
- Resources

# COVID-19 Workers' Compensation Tips and Updates

- Remote Employees - 8871 Class Code
- COVID-19 Claims not included in Experience Mod calculation
- Employees who move out of state – adding to Workers' Comp policy
  - Special consideration for Washington, Ohio, North Dakota, and Wyoming

# COVID-19 Workers' Compensation Tips and Updates

## SB1159

- Report to Workers' Comp carrier regardless of claim filing
  - Reporting ≠ Claim
- Complete Workers' Comp carrier specific tracker spreadsheet for each COVID+ case
  - Employees exclusively working from home are **excluded**
  - Include Volunteer workers regardless if your WC policy excludes them

## California Workers' Compensation:

Use this form to report positive COVID-19 tests *on/after 9/17/20 through 1/1/23*.



CA SB1159 Legislation (9/17/20) directs employers with **five or more employees** to report positive COVID-19 tests (**occurring on/after 9/17/20 through 1/1/23**) to their Claim Administrator within **three business days** of receiving employee notification.

### Instructions

Please **complete a separate form for each employee** who informs you that they had a positive COVID-19 test and **DOES NOT** assert that they contracted COVID in the workplace.

- Do NOT include any Personally Identifiable Information (PII) on the employee
- If your employee claims their COVID-19 exposure **is work related**, do not complete this form. Follow The Hartford's [standard claim reporting process](#).
- Once completed, email or fax this form to:
  - Email: **LossConnect@TheHartford.com**
  - Fax: **(800) 347-8197**

### Employer Information

Employer Name: \_\_\_\_\_ Policy # \_\_\_\_\_

Date of positive test specimen (*test collection date for employee*): \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Date employer informed of positive test result: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Please provide the employee's work location details and workforce data required by the CA legislation below.

Address(es) of the employee's specific place of employment, during the 14-day period preceding the date of the employee's positive test.	The <b>highest number of employees</b> who reported to work at the employee's specific place of employment in the <b>45-day</b> period preceding the last day the employee worked at <b>each specific place</b> of employment.
1.	
2.	
3.	
4.	
5.	

### Submitter Information

Name: \_\_\_\_\_

Phone # (\_\_\_\_) \_\_\_\_ - \_\_\_\_

Email: \_\_\_\_\_

Signature: \_\_\_\_\_

## Employer Notification Requirements

Employer  
Notification  
Requirements

DEADLINE	Day 1 (or less)			Day 2	Day 3
STEPS FOR NOTIFICATION	<a href="#">Notify Employee Exposed</a> (close contact) (Title 8 CCR 3205)	<a href="#">Notify Persons Potentially Exposed</a> (present at the worksite) (AB 685 / LC 6409.6) Effective January 1, 2021	<a href="#">Notify CalOSHA: Serious Injury or Death</a> (Title 8, CCR 330)	<a href="#">Notify Public Health: Outbreak Reporting</a> (AB 685 / LC 6409.6(b)) (8 CCR 3205.1(f))	<a href="#">Notify Workers Compensation: Presumptions</a> (SB 1159 Section LC 3212.88)
WHO TO CONTACT	Employees who may have had COVID-19 exposure and their union representative as well as independent contractors and other employers present at the workplace during the "high-risk exposure period"	All employees and their union representative, and the employers of subcontracted employees, who were on the premises at the same worksite as a "qualifying individual" within the "infectious period"	CalOSHA Enforcement Office in your area (see link under "How").	Local Public Health Department	Workers Compensation Claims Administrator
TRIGGER	Employee was within 6 feet of a "COVID-19 case" for a cumulative total of 15 minutes or greater in any 24-hour period during the "high-risk exposure period," regardless of the use of face coverings	Employer or representative of employer receives "notice of a potential exposure"	Employee Death or Hospitalization for COVID-19	Three or more "COVID-19 cases" or "qualifying individuals" at a "worksite" or "exposed workplace" within a 14-day period	Positive COVID test (Work related, as well as non-industrial)
WHEN	1 Business Day	1 Business Day	8 Hours	48 Hours	3 Business Day(s)
HOW	<ul style="list-style-type: none"> <li>Notice must include information regarding COVID-19 related benefits to which the employee may be entitled under applicable law</li> <li>Employer must offer COVID-19 testing at no cost to employees during their working hours to all employees who had potential exposure in the workplace</li> <li>For employees excluded from work due to a work-related exposure and otherwise able and available to work, employer must continue and maintain an employee's earnings, seniority, and all other rights and benefits</li> </ul>	<p>Written notice (personal delivery, email, text) must include:</p> <ul style="list-style-type: none"> <li>Information regarding COVID-19 related benefits to which the employee may be entitled under applicable law as well as anti-retaliation and anti-discrimination protections</li> <li>Information regarding the disinfection and safety plan the employer plans to implement and complete per CDC guidelines</li> </ul>	<p><a href="#">Serious Injury Reporting to CalOSHA</a></p> <p>Open this link to report a serious injury or death</p>	<p>A list of local health department home pages can be found at <a href="#">List of Local Health Dept Home Page</a></p> <ul style="list-style-type: none"> <li>You will be required to provide information, such as names, number, occupation, and worksite address, NAICS code, etc. of any "qualifying individual" employees</li> <li>Employers are required to maintain records of written notifications for at least three years specific to COVID-19 exposures</li> </ul>	Email or fax

# COVID-19 Workers' Compensation Resources

**CAL OSHA COVID-19 Prevention Program template:**  
**[www.dir.ca.gov/dosh/coronavirus/](http://www.dir.ca.gov/dosh/coronavirus/)**

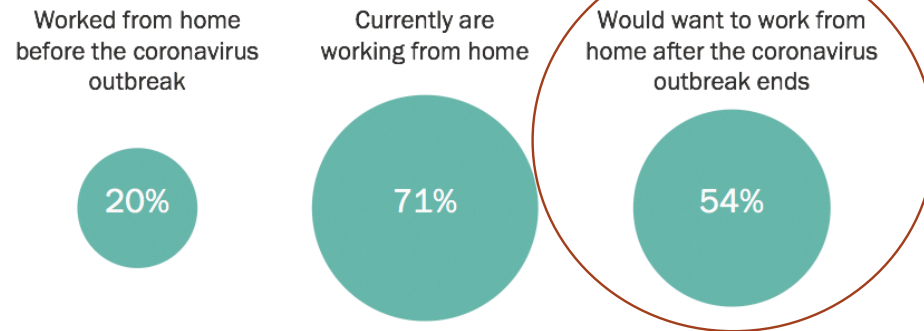
**Employer Reporting Requirement Checklist from Berkshire Hathaway**

# **Part 3:**

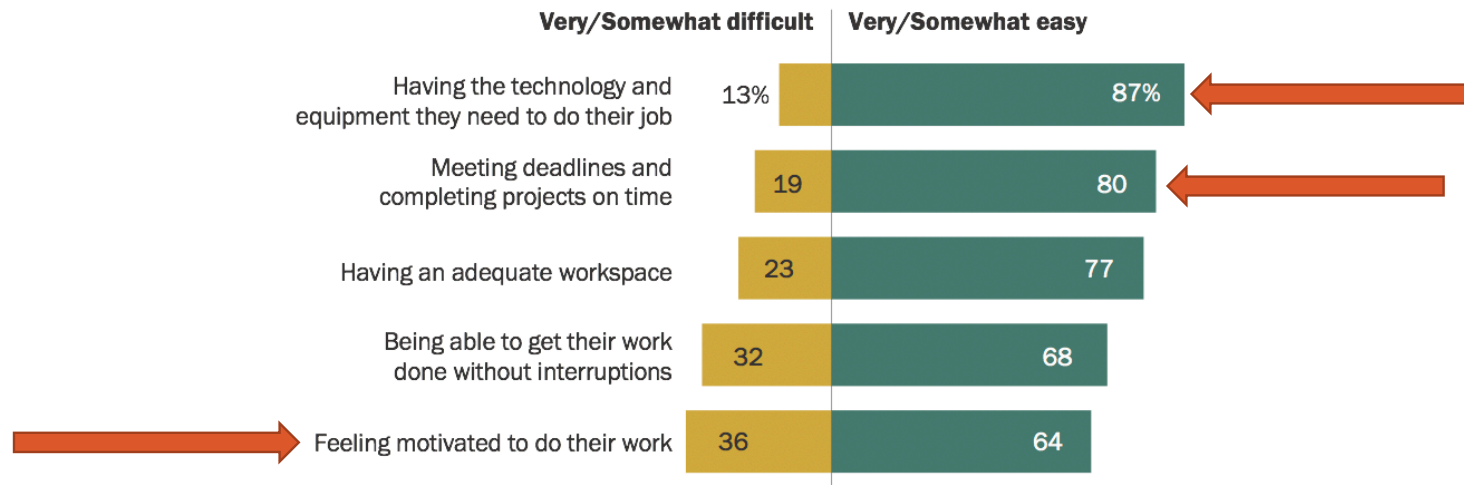
# **Employee Engagement**

# Many workers would like to telework after the pandemic is over; transition to working from home has been relatively easy for many

*Among employed adults who say that, for the most part, the responsibilities of their job can be done from home, % saying they \_\_\_\_ all or most of the time*



*Among employed adults who are currently working from home all or most of the time, % saying that, since the coronavirus outbreak, each of the following has been \_\_\_\_ for them*



Note: For bottom panel, share of respondents who didn't offer an answer not shown.

Source: Survey of U.S. adults conducted Oct. 13-19, 2020.

"How the Coronavirus Outbreak Has – and Hasn't – Changed the Way Americans Work"

# State of Engagement

- Current engagement data exhibits the most significant drop in U.S. employee engagement since 2000
- 54% of workers report being “not engaged”
- 14% of workers are “actively disengaged”
- Even the past recessions of 2001-2002 or 2008-2009, the attack on 9/11 and subsequent aftermath, and prior pandemics have not significantly dented employee engagement in the U.S. to this extent

# Support People First

- Employees are experiencing fear, loneliness, anxiety, and stress, unlike any other time in their history
  - Connection before content
  - Care issues
- Stay healthy - Physically and Mentally
  - Recommend exercise
  - Expanded EAP



# Promoting Engagement

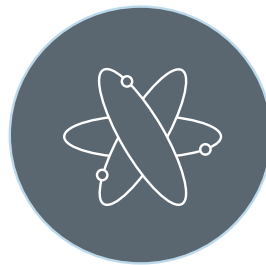
1. Employees define what they're accountable for
2. Cascading goals throughout the organization
3. Regular communication
4. Incorporate growth and development opportunities
5. Celebrate measured success



**Clear  
Expectations**



**Connection**



**Ongoing  
Conversations**

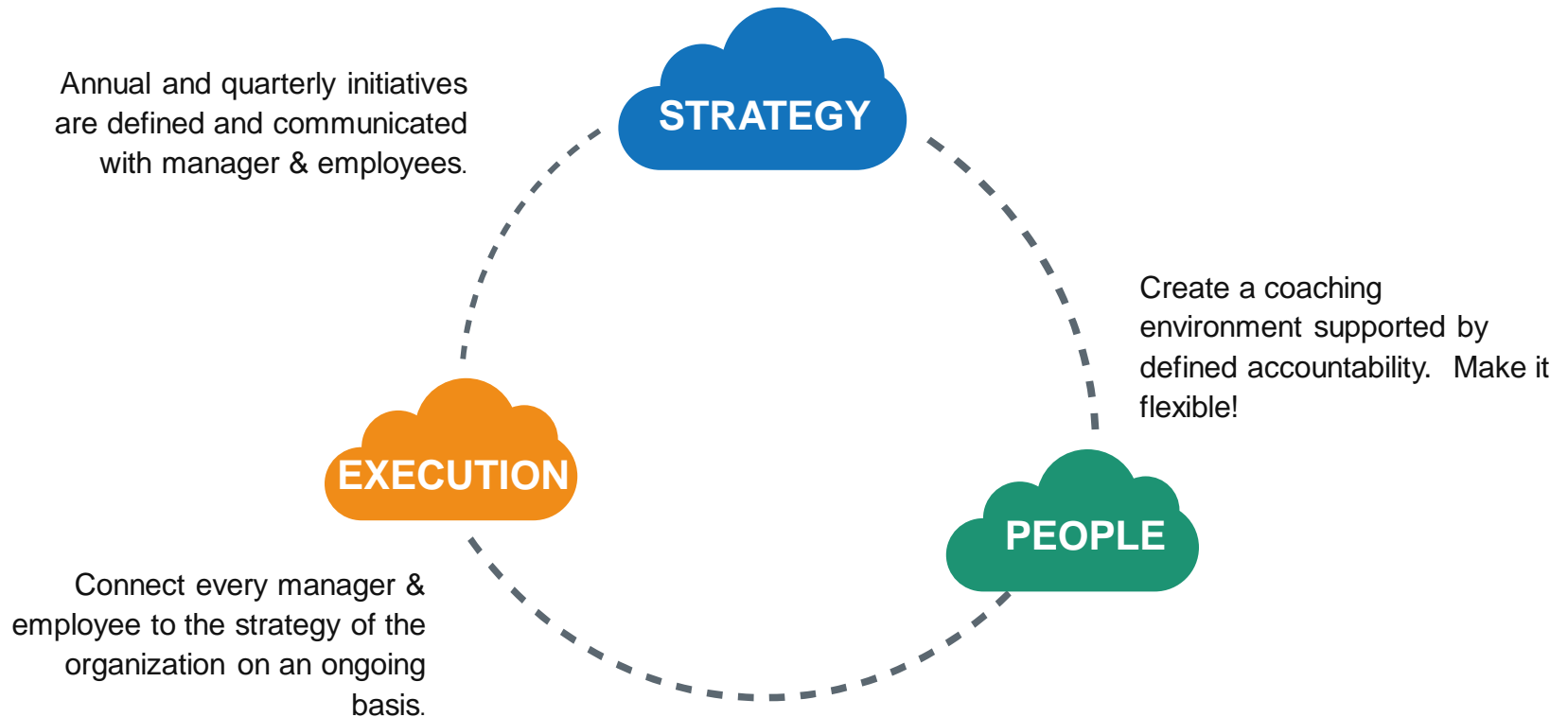


**Growth**



**Appreciation**

# SUCCESS

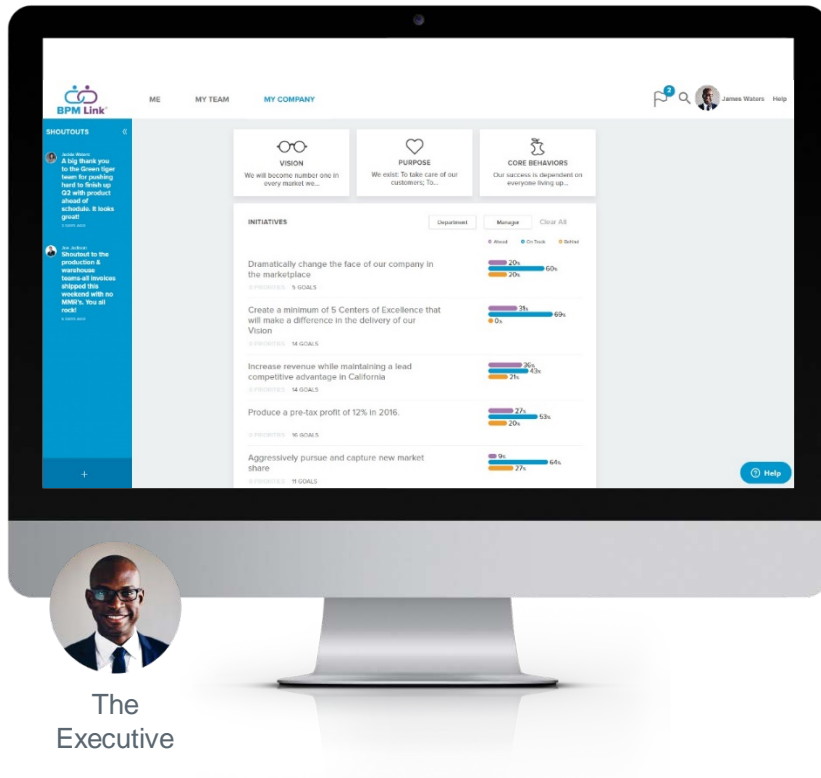


# Key Platform Components

## Your tool should support:

- Employee enthusiasm
- A coaching framework
- Alignment to the strategy
- Regular performance conversations
- Course correction

**Introducing BPM Link**, a simple to use, employee driven, intuitive platform that connects each employees' work to the strategic direction of the organization.



- Easily supports nimble communication through employee & supervisor guided conversations (behaviors addressed via core values)
- Enables organizational agility, due to continuous feedback and course correction
- Uncover gaps between employee perceptions and realities
- Employees participate in their own destiny
- Connects corporate strategy to every employee in the organization



# Questions?



# Thank You!

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