



How you PROMOTE people can MAKE or BREAK Company *Culture*

AND MORE



March 2018

- 2 Highlight:** How You Promote People Can Make or Break Company Culture
- 5 Relate:** Peter Cainero, Sr. Recruiter, Pompton Plains, NJ
- 6 Transcend:** Why We Should Be More Disagreeable at Work
- 8 Recognize:** Antinish McLaughlin, Alabama Automotive
- 9 Innovate:** How to Figure Out What Your Side Hustle Should Be
- 11 Evaluate:** Indiana, Illinois, Michigan Staffing Statistics
- 12 Advise:** HR News



How you **Promote** People can Make or Break Company Culture

By Jessica Rohman, Chinwe Onyeagoro, Michael C. Bush

Managing promotions effectively is one of the most powerful ways leaders can drive their company's success. A survey of over 400,000 U.S. workers in the past year found that when people believe promotions are managed effectively, they're more than twice as likely to give extra effort at work and to plan a long-term future with their company. They are also five times as likely to believe leaders act with integrity — a key underpinning of the high-trust, high-performing companies we've studied for the past three decades as part of the Fortune 100 Best Companies to Work For ranking.

The payoff is impressive: at these companies, stock returns are nearly three times the market average, voluntary turnover is half that of industry peers, and metrics for innovation, productivity, and growth consistently outperform competitors.

However, even these companies struggle when it comes to managing promotions. Among the 100 Best Companies, 75% of employees believe promotions go to those who best deserve them. That may sound high, but it ranks as the third-lowest of all 58 items assessed.

Why, even in the best workplaces, do promotions pose such a challenge?

Promotions are highly personal. At their core, they are both relationship-driven and among the most important indicators of how well leaders' actions align to the company's stated values. A solid promotions

process allows leaders to elevate each employee to their full potential — while showing the company what type of results and behaviors are valued. However, if promotions aren't managed well, one person's success can foster feelings of resentment in others, and the career aspirations of employees across the company can be left unrealized.

Leaders can improve the effectiveness of their promotions process by re-focusing their energy on the people the process is meant to support, at every stage of the process:

Before the promotion: clarify aspirations. Setting the stage for effective promotions starts with defining each team member's long-term aspirations, so you both know how they will contribute as the business grows — and how you can best support them.

Consider a senior call center leader from a large technology company. When she came on as the team's leader, she held meetings with each employee to understand their current role and performance, their interests and ambitions, and gaps.

When a customer support employee expressed his desire to work in IT, she made him her "go to" person for all A/V needs in the call center. When senior leaders would come in to present to the group, she would introduce him, highlight his IT certifications, and invite him to set up their equipment. After months of advocating for this employee (as she did with all her team members) she received a call from the IT leader

saying a support role had opened up on his team. To everyone's delight, the call center employee was able to fill the spot.

This call center leader developed more high-performing leaders than any of her peers in the organization. That was not an accident; she was clear about her team's aspirations, and supported each of them in realizing their advancement goals. What's more, when her people were promoted, the full team celebrated — rather than questioning the promotion. After 14 months of her leadership, her center rose from being one of the lowest-performing groups to the highest performing of all.

When a new job posting comes out: encourage and advocate. A common complaint employees have about their company's promotions practice is a sense that by the time the job is posted, "the fix is already in." Regardless of how transparent the opportunity is, they believe there is already a preferred candidate who will get the position. This lack of faith in the system dissuades people from applying, even when they are interested and qualified.

When a new position is posted, even if you're in lock step with your team on their career aspirations, don't assume the people you expect to raise their hands will do so. Place the burden on yourself to encourage, advocate, and coach people to raise their hand. Let those you hope will apply know: "I want to see you raise your hand for this. Even if you don't feel you're ready, it will give you practice in understanding what's required for the next step in your career."

No tool or system can address a fundamental lack of trust in the promotions process. What will shift this type of mindset is a leader who reaches out when opportunities arise.

Once the decision is made: generate buy-in.

Everyone is curious to learn the "who" component of a promotion decision. However, the opportunity to fully engage people lies in explaining why the decision was made. Rather than rehash criteria from the job description, share inspiring stories and examples of how the individual consistently met the criteria, and also, how their promotion benefits the broader team. To illustrate this last point, we can look to a midsize biotech company. A business leader there recently shared with us his frustration around competition for promotions within his team. There were not enough senior-level seats opening up, and he was losing team members to C-level positions in smaller companies. "Every time I promote one person, I disappoint 10 others," he lamented.

His colleague, who led the company's research division, said he too was challenged in this way. To address the dynamic, he partners with his leaders as a group to discuss how the organization's growth goals will create opportunities for each team member to grow and advance over time.

"As long as my team knows I want them to go as far as they can, and understand how we can all contribute in a way that makes their ambitions a reality, they feel a sense of shared ownership in any promotion that happens," he said.

He went on to share how he routinely anchors promotions announcements with recognition of people on the team who strengthened the business' ability invest in a new role. That way, it isn't about just celebrating the selected individual, but also all those who made the promotion opportunity possible.

There will always be some level of disappointment among those not chosen for a desired opportunity. But the next best thing to personally winning is being a valued member of a winning team, and nearly everyone can get behind that.



Post-announcement: re-calibrate. After the announcement has been made, circle back with those who didn't get the job (or didn't even apply for it) to re-calibrate. Was the issue a matter of readiness ("not now"), aspiration ("not this") or an issue with the company overall ("not here")?

In all cases, your support at this juncture is critical to that person's future success. For those in the "not now" camp, work together to secure the development and training they need for the next time a similar opportunity comes up. For those who say "not this," you can help navigate the organization from a cross-functional and strategic investment standpoint to see what other opportunities are better-aligned to their career aspirations.

For those who are having doubts about the company long term, this may signal they're not interested or feeling supported to advance over time. If you believe the employee is a good fit for the organization, it's worth investing the time to understand the situation so you can determine how to support them.

By systematically empowering leaders at every level to use these principles within their teams, results will be remarkable as more people across the company re-connect with their aspirations, feel a sense of sponsorship, extend trust to leaders when promotions decisions are made, and get excited about what's possible as a valued member of a winning team.

Promotions are about people. When leaders take a caring and coaching-oriented approach, every promotion can feel like a shared win.





PETER CAINERO

Senior Recruiter, Pompton Plains



How long have you been in the staffing business? I have been in staffing for 5 years. I started as a resume sourcer and have worked my way up from there.

What was your first job and what do you remember most about it? My first job was working in retail at a sporting goods chain called Modell's. It taught me how to be responsible and I still remain close with a number of people I worked with at the store.

Who was the worst boss you ever had and why? Mike N. He was someone who let his emotions get the best of him and he would take it out on his employees.

What motivates you each day to sell and service your clients? I love that I have the ability to connect great people with great companies. It is an amazing feeling to know that you can help a company succeed and set people up for success.

What are some of your long-term goals? Professionally, I would like to become a regional manager and have the ability to impact the company on a larger scale. On a personal level, I would love to set up a rental real estate portfolio. I also want to travel the world and experience as many different cultures as possible.

What makes Elite Personnel/Zing Recruiting unique, from your perspective? I believe what separates us is our respect for prospective candidates and our ability to set and meet client expectations in a consultative way.

What makes you successful as a recruiter? It is important to get to know your staff members and co-workers on a professional and personal level. This will allow you to learn their strengths and weaknesses and set them up for success.

What is the best advice you could give to other staff members? Come to work each and every day ready to grind! The more you hit the phones and interview candidates, the more chance you have at success.

What is your favorite movie? *The Departed*. **Book?** *Rich Dad, Poor Dad* by Robert Kiyosaki. **Drink?** Depends on the day; typically, an ice cold beer or a glass of scotch on the rocks.

If you could have any car you wanted, what would it be? Mercedes Benz SL 550, all black.


What is your home city? Westwood, NJ. **What is the greatest feature about your home city?** There's a great town community that is inclusive and everyone knows each other.

How do you unwind when you're not at the office? I love going to the gym and I am a massive sports fan – although, unfortunately, I root for the Mets, Jets, and Knicks, so they don't always help me unwind.


What do people like most about you? People have told me I have a calming presence and that I am very friendly. **Least?** I can be extremely stubborn – just ask my girlfriend.

tO BE FAIR, AGREEING IS usually easier than confronting someone, at least in the short run. And it feels good when someone nods at something we say, or admits, "I see it the exact same way."

Disagreements are an inevitable, normal, and healthy part of relating to other people. There is no such thing as a conflict-free work environment. You might dream of working in a peaceful utopia, but it wouldn't be good for your company, your work, or you. In fact, disagreements – when managed well – have lots of positive outcomes. Here are a few.

 **Better work outcomes.** When you and your coworkers push one another to continually ask if there's a better approach, that creative friction is likely to lead to new solutions. "Conflict allows the team to come to terms with difficult situations, to synthesize diverse perspectives, and to make

sure solutions are well thought-out," says Liane Davey, author of *You First: Inspire Your Team to Grow Up, Get Along, and Get Stuff Done*. "Conflict is uncomfortable, but it is the source of true innovation, and also a critical process in identifying and mitigating risks." And there's rarely a fixed amount of value to be gained in a disagreement. If you and your colleague are arguing about the best way to roll out a new initiative – he wants to launch in a single market first and you want to enter several at one time – you'll be forced to explore the pros and cons of each approach and ideally find the best solutions.

 **Opportunities to learn and grow.** As uncomfortable as it may feel when someone challenges your ideas, it's an opportunity to learn. By listening and incorporating feedback, you gain experience, try new things, and evolve as a manager. When a peer chews you out after an important presentation because you didn't give her team credit for their work, the words may sting, but you're more likely to think through everyone's perspectives before preparing your next talk.

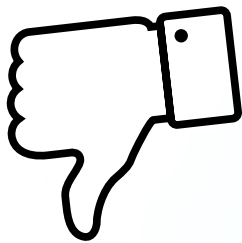
Why we should disagree- be more able at work



Agreeing is usually easier than confronting someone – at least in the short run.


by amy gallo







Instead of feeling as if you have to walk on eggshells, you can focus on getting your work done.



 **Improved relationships.** By working through conflict together, you'll feel closer to the people around you and gain a better understanding of what matters to them and how they prefer to work. You'll also set an important precedent: that it's possible to have "good" fights and then move on.

 **Higher job satisfaction.** When you're not afraid to constructively disagree about issues at work, you're likely to be happier to go to the office, be satisfied with what you accomplish, and enjoy interactions with your colleagues. Instead of feeling as if you have to walk on eggshells, you can focus on getting your work done. Research supports this: A study of American and Chinese employees in China showed a correlation between the use of certain approaches to conflict management – ones in which employees pursue a win-win situation, care for others, and focus on common interests – and an employee's happiness at work.

 **A more inclusive work environment.** If you want to have diversity and inclusion in your organization, you have to be prepared to disagree. Anesa Parker, Carmen Medina, and Elizabeth Schill wrote in their Rotman Management article, "Diversity's New Frontier: Diversity of Thought," that "While homogeneous groups are more confident in their performance, diverse groups are often more successful in completing tasks." They went on to explain that managers and employees need to get over an "instinctual urge to avoid conflict" and abandon "the idea that consensus is an end in and of itself. In a well-run diverse team, substantive disagreements do not need to become personal: Ideas either have merit and posits of connection or they do not."

What's the bottom line to all of this? Being difficult doesn't work, but being disagreeable in the right way might help not just get things done, but get the *right things done right*.

THE **Shining Star** AWARD

Antinish McLaughlin
ALABAMA AUTOMOTIVE



From left: Jarvis Updite, Dorthea Sanders, Antinish McLaughlin, Pearl Wright, Haley Duncan, George Wilder

THE **Shining Star** AWARD

FEB, 2018

Peoplelink is pleased to announce that Antinish McLaughlin has been chosen as our February Shining Star employee. She has been a Relief Team Lead with Sustained Quality for 3 years. She reports to the Alabama Automotive branch of Peoplelink.

In her role as Relief Team Lead, Antinish is responsible for starting jobs, including training team members and answering questions. Currently, Antinish's main responsibility is ensuring tire manufacturer data entered into the system. According to Antinish's supervisor, Lisa Gilbreath, the quality of her work and her attendance are flawless. She is a true team player, coming in early and staying late whenever she is needed.

While on the job, Antinish takes pride in completing projects. In her free time, she enjoys spending time with her family and friends, playing basketball, and cooking.

Congratulations to Antinish for being Peoplelink's February Shining Star employee!

Find your
Shining Star!
Contact us at **574.232.5400**

How to
figure out
what your

side

hustle

should be

by Dorie Clark

A staggering 55 million people – more than 35% of the U.S. workforce – are now freelancers or contractors, and that number is projected to rise to 43% by 2020. About 44 million people report having some kind of side hustle, and of those who do, 36% say they earn more than \$500 a month from it. Entrepreneurship, even in the form of part-time work to complement a traditional day job, can provide a useful hedge against economic uncertainty and a way to develop new skills.

But the sticking point for many is figuring out what your side venture should be. This is especially true if you have a variety of interests or consider yourself a generalist. How do you know what to focus on? How do you assess your expertise? And what are the first steps you should take once you think you've found the right idea? Here are five strategies to keep in mind.

Don't fall in love with your first idea. Life sciences executive Bozi Dar, in his new book *Entrepreneurial You*, profiled what he thought was a brilliant idea for a side project: an app that helped people change their mood by looking at their personal photos paired with music. Unfortunately, it never took off. The reason it failed, he's convinced, is that he "started [the] app not really testing whether there is a

problem [that customers wanted solved], not testing what is my audience, not testing whether anyone was even searching for a solution. I just fell in love with my idea, starting putting money and time into it, and it never worked." Don't just come up with a clever notion; make sure people actually want it before you spend a lot of money developing it.

Understand what you're uniquely qualified to share. After his initial failure, Dar was hesitant to try again. But he realized he could dramatically improve his outcome if, instead of imagining what his audience wanted, he listened to what they were already asking for. At his day job, things were going very well, and he was getting promoted frequently. His friends and colleagues noticed, and he found himself "being invited for these coffee/mentoring sessions nonstop." Dar realized others found his perspective valuable, and perhaps an audience might pay for it. He was right: His online course about how to win promotions earned him an extra \$106,000 – on top of his day job salary – in its first full year.

Don't rush to quit your job. Some people get so excited about their new entrepreneurial venture that they want to go all in immediately and quit their day job. Dar disagrees. He recommends staying in your job for at least a year, if not more. "I would rather stay in the

company and start testing your hypothesis [about your business model],” he says. “What’s the problem? Are people searching for the solution? Who is the customer?.... I’d try to get answers to those questions before I left the job, and the ultimate test [of the idea’s viability] would be that someone opens their wallet to pay for what I’m offering.”

Invest in skill building. A lot of people who are employed by companies, even if they’re very talented, may not be fully ready for entrepreneurship in the beginning. That’s why Dar suggests making a concerted effort – while you’re still in your job – to build out your entrepreneurial skill set. That was my strategy as well. I decided to launch my own business in 2005, but stayed in my job for an additional year, while taking professional development classes – that my employer paid for – on topics I knew I’d need to learn, such as financial management, design, and business strategy. Dar recommends that you use this period to learn “foundational skills,” such as sales, presentations, persuasion, copywriting, and more. “Buying courses, joining a mastermind group, and having a business coach will all help,” he says.

Focus on one channel at a time. Finally, when you’re ready to launch, you can easily get overwhelmed with all the things you could be doing. Instead, Dar suggests, master one channel at a time so that you get really good at it, and then you can build from there. In his case, he has one course (on getting promoted faster); he markets it through one channel (webinars); and he identifies webinar opportunities through one mechanism (affiliate partnerships). That focus “is the only way that you can build a solid base and then conquer other traffic channels or other products,” he says. Facebook ads or search engine marketing might be appealing possibilities, but for now, they’re too much. It’s better to excel in one area and then bridge from there.

A growing number of professionals are embracing entrepreneurial opportunities, whether full- or part-time. To do so, you don’t need to raise venture capital or come up with a Silicon Valley-style “world-changing” idea. Often, the best starting point is simply thinking about what your friends already come to you for, and being willing to experiment – because it’s rarely the case that you get it exactly right the first time.

“...the
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Nationwide, there are 34,700 temporary/contract staffing offices. Staffing employment varies greatly by state. Here we highlight the latest staffing statistics for three Midwest states: Indiana, Illinois, and Michigan.

NATIONAL STAFFING STATISTICS

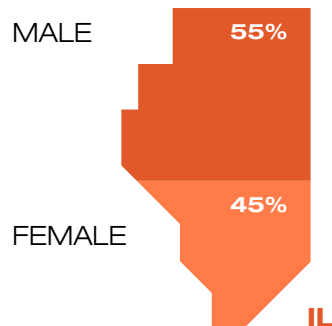
Avg no. temporary workers per week
3.2 million
Average tenure
11.5 weeks
Annual staffing employment
14.5 million

Peoplelink 2017 contingent employees
35,924
Peoplelink 2017 temp assignments
53,055

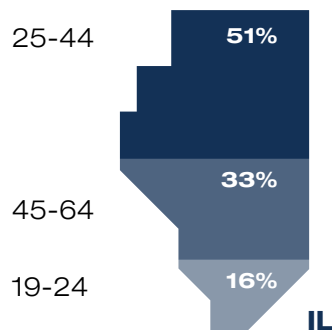
ILLINOIS

Temporary workers per week
174,400
Annual staffing employment
788,300
Estimated number of offices
1,600
Number of Peoplelink offices
9

GENDER



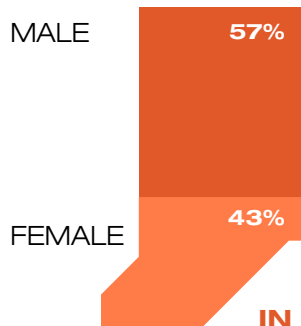
AGE



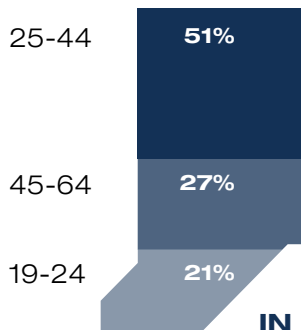
INDIANA

Temporary workers per week
84,300
Annual staffing employment
380,900
Estimated number of offices
740
Number of Peoplelink offices
20

GENDER



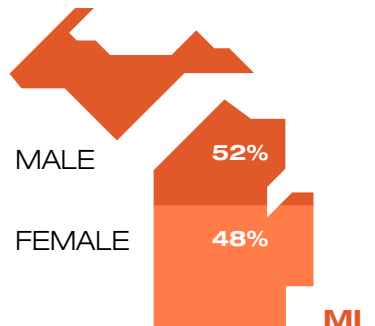
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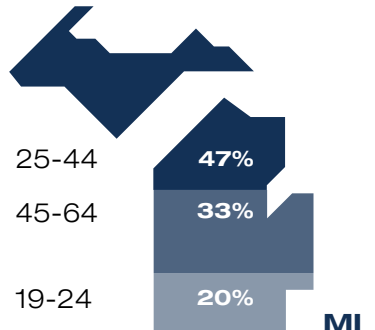
MICHIGAN

Temporary workers per week
114,300
Annual staffing employment
516,500
Estimated number of offices
1,260
Number of Peoplelink offices
5

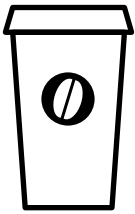
GENDER



AGE



HR News



Hot Latte With a Shot of Notice and Chance to Dispute

by Heather Jackson & Rachel Schaller

Starbucks applicant Jonathan Santiago Rosario received a notification from Starbucks stating he was rejected from hiring consideration because of criminal history information contained in a third-party background investigation report.

Rosario disputed the accuracy of the information and the third-party background investigator removed it. But Starbucks did not reinstate Rosario's job offer. Rosario brought a putative class action against Starbucks under the Fair Credit Report Act for failing to provide affected applicants with a copy of their background investigation reports and a summary of their rights under the FCRA before taking an adverse employment action.

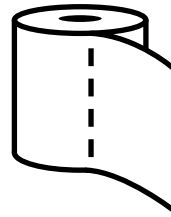
Starbucks argued Rosario did not have an FCRA claim because he was provided a copy of his background report and an opportunity to contest the report before he received the letter notifying him that he was rejected from hiring consideration. The court rejected this argument.

Rosario successfully argued he was actually rejected when the third-party investigator "adjudicated his application for employment based on Starbucks' hiring requirements and when Starbucks 'adopted' that adjudication."

Thus, because Rosario alleged Starbucks "rubber stamped" the third-party investigator's decision before sending Rosario notice of his rejection, the court allowed Rosario's putative class action to proceed past the motion to dismiss stage.

Impact

FCRA notices should contain clear and reasonable deadlines for disputing the accuracy of background investigation reports, and no final decision should be made until after the expiration of the dispute period, and consideration of information, as corrected by the third-party investigator.



What are the most annoying co-worker habits? Study says...

by Rachel Mucha

If you get annoyed by your co-workers from time to time, you're not alone. In a recent survey conducted by Olivet Nazarene University, 2,000 American workers were asked if they ever get annoyed at work. One-hundred percent of respondents said yes.

Bad habits

So what are these co-workers doing to get under everyone's skin? Respondents listed the following:

- **49%** are annoyed by loudness and complaining
- **32%** are annoyed by gossiping and bullying
- **12%** are annoyed by bathroom and eating habits
- **6%** are annoyed by email and meeting habits, and
- **1%** are annoyed by employees' personal hygiene

Some industries experience certain problems more than others. For example, those in the communication or journalism field tend to deal with gossip in the office more than other industries.

Every respondent had at least one co-worker who annoyed them on a regular basis. Here's the breakdown:

- **21%** had one annoying co-worker
- **73%** had 2-5 annoying co-workers
- **4%** had 6-10 annoying co-workers, and
- **2%** had more than 10 annoying co-workers.

While the majority of the respondents only had a few irritating colleagues, some had quite a few. The survey also had respondents reveal the first names of the most frequent offenders (sorry Sarah, John, Jessica, Mike, Lisa, and Mark).

For the most part, though, many workers aren't overly bothered by their fellow employees. 70% were either not annoyed, a bit annoyed, or annoyed by co-workers' behavior; only 30% were quite annoyed or extremely annoyed on a regular basis. Those in real estate tend to have more colleague complaints while public service professionals have fewer grievances.

HR News

Confrontation

The survey found that most employees were driven to deal with the annoying co-workers; 78% of respondents have confronted a colleague about their behavior. Only about 30% confronted the annoying co-worker directly, though; the majority (47%) had another co-worker do their dirty work for them. Twenty percent of respondents went straight to the boss or HR, and 3% somehow managed to get the whole office involved in the conflict.

Fourteen percent admitted to publicly shaming a co-worker for their annoying behavior, and here's how they did it:

- **39%** told everyone in the office
- **29%** left a note in a shared space
- **22%** sent out an email, and
- **10%** posted about it on social media

Maybe not too surprisingly, 70% (of all types) of respondents' confrontations did not resolve the problem.

Are you the irritating one?

It's possible that you're annoying your co-workers and don't even know it. While 71% responded that they have been confronted about annoying behavior before, only 24% reported being aware of their irritating habits.

If you're a senior employee or manager, though, the survey found you're 34% more likely to believe you are the source of someone's annoyance.

When it comes down to it, no matter where you work, there are going to be some people you just don't mesh with. Most survey respondents only had issues with a handful of co-workers, and only 36% have found new jobs because of them. But if there are more than 10 colleagues you're very annoyed by on a regular basis, it might be time to get a new job!

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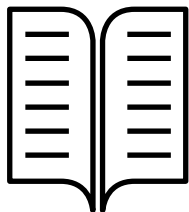
By implementing better operating procedures, Peoplelink can give you access to a deeper pool of talent, reduce the risk of hiring mistakes, and make sure you get the people you need – where and when you need them.

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HR News



5 Employee Handbook Issues to Watch in 2018

by Lisa Nagele-Piazza

The federal government's focus on deregulation combined with active state legislatures and municipalities mean a cookie-cutter employee handbook isn't a realistic option for employers. Handbooks should be reviewed regularly to ensure compliance with ever-changing workplace law.

Companies should be particularly attentive to state and local laws on leave entitlements, background checks, and wage and hour requirements, as well as newer areas including marijuana and other drug-related laws and guns in the workplace.

Here are some of the key issues employers should monitor in 2018 that may trigger a handbook update.

Workplace Conduct and Social Media

With a Democratic majority under President Barack Obama, the National Labor Relations Board (NLRB) scrutinized social media policies and other workplace conduct standards that could have limited workers' right to engage in protected concerted activity.

The pendulum is expected to swing the other way under President Donald Trump, said Bruce Sarchet, an attorney with Littler in Sacramento.

For example, the board's new general counsel, Peter Robb, issued a memorandum rescinding prior memos that led to the board's close scrutiny of handbook and policy provisions. Already, the board has overruled a previous standard striking down employer policies if they could be "reasonably construed" to curb employee discussions about wages and working conditions—even if the policies weren't intended to do so. The board's new standard will consider whether the employer has a legitimate justification for the rule.

Arbitration Agreements

Employers should pay close attention to the pending federal cases relating to the enforceability of arbitration agreements and class-action waivers to

make sure their handbooks comply with the relevant rulings, Martin said.

The law in this area is in a state of flux, but a ruling from the U.S. Supreme Court should be coming soon. Sarchet noted that revising handbook policies on arbitration now might be premature. "Employers may want to wait to see how the Supreme Court rules on the issue.

Sexual Harassment

Sexual harassment news has swept across the country as leading men in Hollywood and politics have been ousted due to a flurry of allegations. Therefore, it's a good time for HR professionals to take a look at their anti-harassment policies and procedures to make sure they're up to par.

Policies need to adequately tell employees how to register a complaint, and they need to give workers multiple outlets for complaining, said Randi Kochman, an attorney with Cole Schotz in Hackensack, N.J. "Having a policy that requires employees to report incidents to their supervisor isn't helpful if the supervisor is the one doing the harassing."

State requirements must be taken into account as well. In 2017, these states revised sexual harassment training requirements:

- **California.** The state has expanded current supervisor training requirements. Covered employers must add to their harassment prevention training content on harassment based on gender identity, gender expression and sexual orientation. The training and education must include practical examples inclusive of harassment based on gender identity, gender expression and sexual orientation, and must be presented by trainers or educators with knowledge and expertise in those areas. The amendments took effect on Jan. 1, 2018.
- **Maine.** Effective Nov. 1, 2017, Maine's amended sexual harassment training law requires employers in the state with 15 or more employees to use a compliance checklist provided by the state's Department of Labor to develop a sexual harassment training program and keep a record of any training conducted for three years. The amended law also establishes the penalties an employer

HR News

may face for failing to comply.

Parental Leave

States are starting to expand their parental leave laws. In California, for example, businesses with 20-49 employees will need to offer job-protected baby-bonding leave starting in 2018. Larger businesses already fall under the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act. California also increased state paid-family-leave insurance benefits and will eliminate the one-week waiting period for claims.

In New York, many employees will be eligible to take paid family leave beginning in 2018. Even in states without generous leave laws, many businesses offer paid leave as a benefit.

Related policies shouldn't have separate baby-bonding rules for mothers and fathers, Kochman said. She noted that employers can have separate standards for mothers during the time they are disabled by pregnancy, but parental leave policies should use terms like "primary caretaker" and "secondary caretaker." These policies and practices should be reviewed in conjunction with FMLA guidelines for larger employers.

Disability and Other Accommodations

Employers need to understand that their obligation to provide leave could go beyond the 12 weeks afforded under the FMLA, Kochman said. For example, a request for intermittent leave to treat a medical condition may be a reasonable accommodation under the Americans with Disabilities Act (ADA).

The 7th U.S. Circuit Court of Appeals recently ruled that, while the ADA may require brief periods of leave, an extended leave of absence beyond FMLA time isn't a reasonable accommodation. However, the Equal Employment Opportunity Commission and other courts disagree with the 7th Circuit. Therefore, employers should carefully review their policies and keep up with developing laws in this area. Medical marijuana case law is also evolving. In 2017, several courts ruled that registered medical marijuana users who were fired or passed over for jobs because of their medicinal use could bring claims under state disability laws.

"HR professionals should review their drug-testing policies and practices and consider consulting counsel before taking any adverse action following a positive drug test for marijuana in a state in which medical or recreational use is legal," said Cheryl Orr and Irene Rizzi, attorneys with Drinker Biddle in San Francisco.

Lactation and pregnancy accommodation requirements have also passed in some jurisdictions, such as San Francisco, Connecticut, Massachusetts, Nevada, Vermont and Washington state.

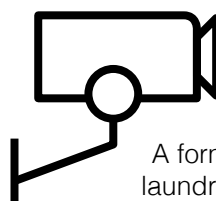
The Bigger Picture

With all the state and local changes, it may no longer be effective to have one handbook that is applied throughout the states. Employers don't want a nationwide handbook that has 50 different leave laws, for example, because it's confusing and overwhelms the process.

HR professionals should ask themselves what the purpose of the employee handbook is and what essentials should be included. Otherwise, the handbook could start to mimic a code of regulations.

A solid handbook will include equal employment opportunity policies and internal complaint procedures; legally required policies, notices and disclaimers; and likely an employment-at-will statement. Other provisions may depend on the specific employer, the state and the handbook's purpose.

Regardless of what the handbook includes, HR professionals need to be on the lookout for changes at the federal, state and local levels. "Now, more than ever, human resource professionals need to stay abreast of fast-moving changes in employment law through continuing education," Martin said.



Surveillance Video Foils Plaintiff's ADA Claim

by Jonathan E. O'Connell

A former employee of a commercial laundry machine manufacturer could not proceed to trial with his Americans with Disabilities Act (ADA) discrimination and failure-to-accommodate claims because surveillance video called into question

HR News

his alleged physical limitations, the U.S. District Court for the Eastern District of Louisiana held.

The plaintiff was hired as a full-time employee of Pellerin Milnor Corporation in 2013, where he assembled harnesses for industrial dryers. His job was physically taxing, involving kneeling, crouching and standing for extended periods of time.

The plaintiff alleged in the summer of 2015 that he began to experience debilitating pain in his right foot. He subsequently reported to work with a “light duty” note from his physician, as well as follow-up information regarding his alleged limitations. In August 2015, he applied for and was granted short-term disability benefits. At no time did he request “light duty” work, because there was no such version of his position.

While the company conducted surveillance of a co-worker during the plaintiff’s short-term disability leave, the plaintiff was observed driving, standing, walking and exercising on a stationary bike all without a corrective boot—activities he claimed he was incapable of performing due to his condition. On Jan. 22, 2016, the plaintiff was fired for dishonesty and falsifying records. Specifically, the company told him that it found discrepancies between his alleged restrictions and the activities he was observed performing in the surveillance video. The plaintiff subsequently filed a lawsuit alleging, among other claims, ADA disability discrimination and failure-to-accommodate.

In assessing his discrimination claim, the court began by noting that the company articulated a legitimate, nondiscriminatory reason for its termination decision—that the surveillance video conflicted with the plaintiff’s alleged physical limitations.

In response, the plaintiff asserted that he was able to perform the activities observed in the video because of inserts in his shoes that alleviated his condition. But even assuming this was true, the court said, the company’s decision was not based on a discriminatory motive. Rather, the company based its decisions on a belief that the plaintiff had been dishonest.

Finding in favor of the company, the court noted that an employer’s reason underlying its decision for an adverse employment action need not be correct or proper—just as long as it is not discriminatory.

With respect to the plaintiff’s failure-to-accommodate claim, the court began by noting that it was undisputed that he did not request a reasonable accommodation. The court explained that an employee who needs an accommodation has the obligation to make such a request to his employer, and that while no “special words” are required, he must nevertheless make his need clear.

Once the request is made, the employer must then engage in the “interactive process” with the employee “with the goal of finding an appropriate accommodation for the limitation.”

Here, however, the court found that because the plaintiff did not request an accommodation, the company did not have an obligation to engage in the interactive process, and thus, the failure-to-accommodate claim could not proceed.

Professional Pointer

While courts generally hold that it is the employee’s obligation to request a reasonable accommodation, it is also true that there are no “special” or “magic” words that must be used by the employee to trigger the employer’s obligation to engage in the interactive process. Although the court in this case held that the plaintiff did not satisfy his obligation to request an accommodation, a slightly different fact pattern may have yielded a different result. Employers should ensure that managers understand the appropriate course of action when employees express concern about the potential impact of physical or mental conditions on their ability to perform job duties.

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