What to Do About
PERSONNEL PROBLEMS

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Bad Taste, Poor Ethics, or Illegal?

A professor at an Arizona community college issued three e-mails to a distribution list maintained by the college. Many recipients considered his messages racist, offensive, and/or misguided. They pointed to his claims that 'Western Civilization' is superior and his derogatory comments about Hispanics. Were his comments illegal?

What happened. "Kowalski," a professor at Maricopa County Community College, initially objected to the school's celebration of Dia de la Raza (Day of the Race) as a Latino parallel or substitute for Columbus Day. He called the event racist. Spurred by objections to his message, he sent another a week later and a third 2 days after that, all of them defending the primacy of European history and culture. The third message contained a link to the professor's own website on the district's Web server. On his site, he talked of the need to preserve the 'White majority.'

Many prominent figures in the college community, including the college president, condemned Kowalski's comments, with the president calling them "hurtful" and "disrespectful." But the chancellor noted in a press release that disciplining Kowalski "could seriously undermine our ability to promote true academic freedom." In the absence of discipline, a group of Latino employees sued the college administration, charging that Kowalski had created a hostile work environment, and the college had done nothing to stop it.

In federal district court, a judge ruled for the plaintiffs and said the college defendants did not deserve immunity from the charge. They appealed to the 9th Circuit, which covers Alaska, Arizona, California, Hawaii, Idaho, Montana, **Nevada,** Oregon, and Washington.

What the court said. Appellate judges did not agree that "speech" in the form of offensive e-mails constituted harassment, especially because it was not targeted to any individuals but to the general public. Like administrators, judges cited the need for academic freedom, and for constitutionally protected freedom of speech, regardless of the ethics or taste of Kowalski's messages.

Judges wrote that his messages "were the effective equivalent of standing on a soapbox in a campus quadrangle and speaking to all within earshot." So whether or not the defendants had qualified immunity, nothing illegal had been done, and the plaintiffs' suit was dismissed. *Rodriguez v. Maricopa County Community College,* U.S. Court of Appeals for the 9th Circuit, No. 08-16073 (5/20/10).

Point to remember: *If Kowalski had spoken or written directly to any Latino faculty member, administrator, or student with the insults in his messages, harassment might have occurred.*

Don't Let Your Hiring Process Ruin Your Brand

Suppose you have an opening—a rare occurrence in this economy. And suppose you are inundated with applications, online, by phone, or snail mail. When you choose to do interviews, says David Litherland, conduct them carefully. Otherwise, you put your firm's reputation at risk.

What you do (and don't) say matters. Litherland is a recruiter and interviewer with Summit Search Group in Vancouver, British Columbia, and he's heard some real horror stories about interviews: an interviewer who fell asleep in front of a candidate; one who was only interested in a candidate in order to scoop information about the competitor for whom the interviewee was working; an interviewer who set up meetings in an off-site location but didn't show up; and one who asked all candidates to prepare a business plan and then cancelled the search following interviews.

Perhaps you can understand what prompted such bad interviewer behavior. After all, there are so many talented applicants in the market for a job that prospective employers can afford to burn some of them off, right? Wrong, says Litherland firmly, and here's why: Any time you set up an interview with an applicant, it's as if you had just opened a retail store. If a "customer" is treated badly, he or she won't shop with you again.

Worse still, Litherland stresses, the offended applicant is very likely to contact all his or her acquaintances on Twitter, LinkedIn, MySpace, or another social medium and spread the word about the rude treatment. Whoops! There goes your organization's reputation—with more people than you can afford to offend.

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Don't Let Your Hiring Process … *(cont. from pg. 1)*

Litherland cites the example of a large and prestigious Canadian organization for whom he recently interviewed candidates for an opening. When several weeks went by after the interviews with no response to the candidates from the company, at least one of them called Litherland to say he was no longer interested in working for the organization—ever.

Train your interviewers—carefully. Litherland has a list of best practices he believes are necessary to protect your brand.

- Remember that any contact with an applicant—by phone, in writing, or face-to-face—is a marketing opportunity for your company.
- Treat each person you interview as a potential customer.
- Allow enough time for each interview; candidates who are rushed through the process are likely to be offended.
- Prepare a preset list of questions that you will ask all candidates. Why not just let the interview go its own way, based on each individual's strengths and weaknesses? Says Litherland, "How can you later compare candidates with one another if they haven't all taken the same 'test'"?
- If an interview is going poorly, "suck it up and see it through," Litherland advises.
- If an interview is going horribly, simply state that the interview time has expired, and then offer to answer any remaining questions the candidate may have.
- Keep in mind that the overall goal of any interview is to have the candidate report that his or her experience with the organization was a positive one.

Litherland offers more tips: He urges interviewers to take plenty of notes during interviews, to remind them what their impressions were of each person with whom they spoke. We asked whether, in his opinion, the organization should respond in some way to every application it receives for a particular opening. Litherland believes most organizations will find that an onerous task, given the hundreds or thousands of applications they may receive. Instead, he advises, end each posted opening with a statement like this: "Only those candidates deemed qualified will be contacted."

But Miss Manners, aka Judith Martin, said in a recent column concerning applications submitted online: Companies could use "form replies, which is easier than ever with e-mail," to let candidates know at least that their applications have been received. But you must respond personally, says Litherland, to everyone you've interviewed. Even if you write to say the opening will not be filled, at least you won't leave candidates feeling ignored.

Finally, Litherland recommends this interview structure:

- Discuss candidate's résumé for about 10 minutes.
- Positively describe the company and the opening.
- Pose preset questions.
- Address candidate's questions.

Train Your Supervisors to Avoid These 10 Mistakes

We know that you know that managers and supervisors need to understand what they can and can't do in order to keep their treatment of subordinates within the limits of legal constraints. So you're giving them the requisite HR and employment law framework, right? But consultant Tom Terez suggests you add training to help them avoid what he calls "the top 10 mistakes of well-meaning managers." Here's what he's talking about:

1. Don't strain an individual's strengths. One team member may be good at math, at a sophisticated software program that the team uses, at creating a PowerPoint®, or whatever. But don't overuse that person's skill. It may be only a part of his or her job description, so ask about the team member's preferences and choices—and listen to the answers.
2. Don't use the same managerial style with every member of the team—something Terez calls "supervising on autopilot." Everyone reacts differently to different styles. Watch for situations when a new approach will bring better results.
3. Don't "gloss over" reality. Many supervisors want to be liked, but that desire may lead them to tell employees what they want to hear rather than what they need to hear. Managers should be "forthright communicators who give people a full set of facts" about their performance and the company's progress, says Terez.
4. In a suggestion like #1, avoid seeing subordinates in one dimension (as in, "Joe's the worrier; Sam's the procrastinator; Jane is always happy"). Those traits may be part of their personalities, but not the whole picture.
5. Don't conduct an employee attitude survey and then ignore the input. Share results with everyone and seek group suggestions for improving.
6. Don't ignore the elephant in the room—looming layoffs, or a big problem that's on everyone's mind. Start a dialog and address the elephant directly.
7. Don't do alone what's best done by a group. Groups bring empowerment and trust. Let go and let others make some decisions.
8. Avoid overuse of "efficient" communication. A mass e-mail about a sensitive issue can't replace "high-touch" approaches that take more time, like a meeting.
9. Don't assume people feel valued. Genuine gratitude for work well done is emotional compensation, and it's inexpensive to deliver.
10. Avoid overwork as a manager, and don't demand it of the team. Taking a break now and then to recharge and renew will make all of you the better for it.

See more from Terez at http://buildabetterworkplace.com.

BLR Shares Results of Targeted Benefits Surveys

For many years, BLR® has surveyed benefits and compensation professionals. In 2010, we've expanded that program with a series of brief, targeted surveys. They're called our *Fringe Benefit Survey Series,* and their findings are analyzed and presented free to all respondents. They're also available to you as a subscriber. Here we summarize some of those findings.

Employees can save more toward retirement. The first survey we conducted among subscribers to our e-newsletter, HR Daily Advisor, concerned Section 401(k) retirement savings plans. In November 2009, 68% of responding readers reported that their company allows employees to contribute 25% or more of their earnings to their 401(k) savings. That number is up significantly from the 58% of respondents answering the same question in our *Survey of Employee Benefits* in late 2006.

More than 1,000 subscribers responded to our 2009 mini-survey, with 75% of them coming from companies with fewer than 500 employees. The companies were about evenly distributed across the United States. Regarding 401(k) employer matches, 22% of companies reported giving no match, 32% match between 2% and 4% of employee salaries, and 33% match up to 6%. Among matching organizations, nearly 60% match at least 50 cents on each dollar saved.

More employers succeed in controlling healthcare costs. Our second mini-survey, conducted in December 2009, reflected employers' experiences during last year. Almost 1,400 subscribers around the country responded, 80% of whom represented companies with fewer than 500 employees. Nearly three-quarters (72%) said they'd taken at least one cost-reduction step in 2009.

Of those, more than half reported they had raised employees' portion of healthcare premiums. At least one in four said they had taken one or more of the following steps: raised employees' co-pays and deductibles, offered health savings accounts (HSAs) and/or health reimbursement accounts (HRAs), or implemented a wellness program. Similar percentages of respondents reported they intended to take many of the same steps in 2010, with larger numbers of companies expecting to raise employees' share of premium payments and to conduct dependent audits than did so in 2009.

Here's the best news in these survey results: 41% of respondents reported spending less than $5,000 per employee on healthcare coverage in 2009, with another 47% reporting costs between $5,000 and $10,000, and 12% reporting per-employee costs of more than $10,000. But the percentage spending under $5,000 was higher than reported in BLR's *2008 Survey of Employee Benefits,* which was only 35%.

What do typical employers' healthcare plans cover? In order of popularity, with numbers ranging from 96% down to 74%, the top offerings are prescription drugs, mail-order drugs, mental health treatment, drug abuse treatment, alcoholism treatment, and dental care.

PTO programs are increasingly popular. In January 2010, we asked about the use of paid-time-off programs. As you know, such plans, sometimes called "banks," combine specifically earmarked kinds of paid time off into one category that employees can use when they see fit. First, converting from different types of time off to PTO banks is becoming more common: 54% of employers, among nearly 2,000 respondents, reported using this method. The last time we asked the question, in late 2007 in BLR's *Survey of Employee Benefits,* only 43% of respondents reported having a PTO bank.

And what kinds of time do they include in their plans? Virtually all roll in vacation and sick leave (94% and 90%, respectively), and personal days comes in third, at 84%. Next are time for dependent care (45%), for a death in the family (32%), and for holidays (29%). In these responses, virtually all employers reported offering the program to both exempt and nonexempt employees, and nearly 75% allow employees to carry time over to subsequent years. But 92% don't allow saved time to grow forever: 30% cap banks at between 20 and 29 days, another 29% allow accumulations of between 30 and 59 days, and just 9% permit saving 90 or more days.

Employees wait longer for disability coverage. Seventy-seven percent of employers told us in March and April of 2010 that they require new hires to wait at least 7 days before gaining short-term disability insurance under the employer's aegis. That percentage is up significantly from results of our *Survey of Employee Benefits* in late 2006, which was 65%.

How much of an employee's salary do employers provide with short-term disability coverage? Most companies (64%) report paying between 60% and 69% of salary for 13 weeks or less. However, the largest number of respondents, 37%, will pay benefits for 26 weeks. We also found longer waiting periods for long-term disability insurance; 94% of respondents require a delay of 3 months or longer, compared with 80% of employers included in the 2006 survey. Nearly 400 employers participated in this mini-survey last spring.

To access the full results of these and other forthcoming *Fringe Benefit* surveys, log on to your *What to Do About Personnel Problems* online companion guide at www.BLR.com/CompanionGuide/Personnel. Once you've logged in, click the link for "Benchmark Reports (Surveys)" and select "2010" from the drop down menu. From here you can access results from our *Fringe Benefit Survey Series.*

This Month's Statistics

	Latest Period	Current	Prior Report	A Year Ago	12 Month % Change
CPI-U					
National	May\10	218.2	218.0	213.9	2.0%
West Region	May\10	221.4	221.2	218.6	1.3%
CPI-W					
National	May\10	214.1	214.0	208.8	2.6%
West Region	May\10	216.0	215.9	212.3	1.8%
ECI Employment Cost Index					
Total Compensation--National	1Q\10	111.1	110.2	109.3	1.6%
Total Compensation--West Region	1Q\10	111.4	110.7	109.9	1.4%
Wages and Salaries--Private Industry	1Q\10	111.4	110.9	109.8	1.5%
Wages and Salaries--Civilian Workers	1Q\10	111.7	111.2	110.0	1.5%
Wages and Salaries--West Region	1Q\10	112.1	111.6	110.5	1.4%
Benefits--Private Industry	1Q\10	110.4	108.8	108.2	2.0%
Average Weekly Gross Wages					
National, Total Private*	May\10	$636.17	$632.93	$614.01	3.6%
Nevada, Manufacturing	May\10	$562.38	$566.93	$596.60	-5.7%
Average Hourly Wages					
National, Total Private*	May\10	$18.99	$18.95	$18.55	2.4%
Nevada, Manufacturing	May\10	$15.45	$15.49	$15.70	-1.6%
Unemployment*					
National	May\10	9.7%	9.9%	9.4%	0.3%
Nevada	May\10	14.0%	13.7%	11.5%	2.5%

*seasonally adjusted

KEY TO STATISTICS

CPI-U: Consumer Price Index for all urban consumers; the newer index representative of the buying habits of about 87% of the total U.S. population. (1982–84=100)

CPI-W: Consumer Price Index for urban wage earners and clerical workers; the older index covering only about 32% of the U.S. urban population.

ECI: Measures change in compensation per hour worked, including wages, salaries, and employer costs of benefits. (6/89=100)

Average Weekly Gross Wages and Average Hourly Wages (National, Total Private): Data relate to production workers in manufacturing and mining; construction workers; nonsupervisory workers in transportation, public utilities, and wholesale/retail trade; also finance, insurance, real estate, and other services. Accounts for approximately 80% of the total employees on private, nonfarm payrolls.

5 Tips for Responding to Reference Requests

Employment Screening Resources (ESR), a Novato, California-based provider of preemployment screening services, offers these suggestions for responding to requests for references:

1. Have a written policy and procedure for giving references. Make sure everyone knows what your rules are for references.

2. Send all information requests through a central source. This makes corporate responses consistent and reduces the chances that a manager will give out information that is contrary to company policy.

3. Document each request carefully. Document who is requesting the information and for what purpose, and note what responses were given. This documentation is particularly important since the reference giver may leave the company. Remember, says ESR, that former employees often have friends call or hire paid "reference checkers" to contact a previous employer to see what sort of reference the employer is giving.

4. Ask for a release. This will provide clear evidence that the applicant authorized the request.

5. Be wary of lawsuits. If a former employee has filed a lawsuit, or has any sort of pending claim such as workers' compensation, do not give out any information beyond the basics without contacting the Legal Department or company counsel.

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