



Culture vs. Discrimination in the Workplace

By Bobbi Kloss

“Employee turnover at all-time highs.” “Lowest unemployment rates in 18 years.”

Do these headlines sound familiar? They should, as they have dominated the business news media and the Human Resources forums for the past year. The facts behind these headlines are a reflection of the challenges that all employers are having in their ability to attract and retain employees, including 3.9% unemployment rate; employee turnover 35% times more than previous generations; and compensation and benefits the third most important aspect of what attracts Millennials.

These converging forces of a tight labor market and generational influences has left the challenge of competing for candidates keeping HR up at night. Savvy employers know that they need to change their strategies in order to be considered an employer of choice. The tactic of only offering a competitive compensation and comprehensive benefit package is outdated. The candidates are now driving the interview asking, “Why should I work here?” Employers need to show how they elevate themselves above (or at least equal to) the competition with innovation, teamwork, career progression, holistic wellness and being technology driven. These are the faces of the culture that are attracting and retaining employees.

New employees will want to see that they were not sold a bill of goods during the hiring process. Detailed onboarding for integration into the work environment to flexible work schedules and other work-life balance initiatives, consistent constructive communication between management and staff, financial wellness plans, and community service opportunities are several ways that culture can be infused into the workplace.

Failure of an employer to promote the need for a conducive work environment can result in turnover as employees are quicker than ever these days to leave. Many employees are lost at the 2-year mark as job dissatisfaction sets in. This, in turn, cost an employer in loss productivity, recruiting fees, and the ability of a new hire to ramp up. The costs for turnover are significant. Turnover costs an employer six to nine month’s salary on average, according to SHRM. This can equate to approximately 20% of a worker’s salary. Employers can ill afford to have a revolving door.

Discrimination continues to dominate in the workplace – With employers having to recreate their Human Resources philosophy in order to thrive, why then do we continue to see equally hard-hitting headlines out of the Equal Employment Opportunity Commission (EEOC) for employees complaining of discrimination and harassment in the workplace?

There were 84,254 claims filed in 2017 EEOC resulting in \$355.6 MM in monetary benefits paid out, not including that obtained through litigation. EEOC filed over 200 enforcement lawsuits for 2017. EEOC filed over 100 lawsuits for discrimination, retaliation, and harassment to-date in 2018.

Who is the EEOC? – The EEOC enforces the federal anti-discrimination laws, including Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act, the Equal Pay Act, the Age Discrimination in Employment Act, Americans with Disabilities, Sections 501 and 502 of the Rehabilitation Act, Sections 102 and 103 of the Civil Rights Act of 1991, and the Genetic Information Nondiscrimination Act (GINA) that protect an applicant and employee from being discrimination against because of their race, color, religion, sex (including pregnancy, gender identity and sexual orientation), national origin, age (over 40) disability or genetic information. It is also discriminatory behavior for an employer to retaliate against a person who has complained, filed a charge or participated in an investigation or lawsuit regarding employment discrimination.

Employees who believe that they are being discriminated against at work can file a Charge of Discrimination with the EEOC and must do so before they file a lawsuit. The goal of the EEOC is to make the affected employee whole as if the discrimination had not taken place. This could include hiring, promoting, and restoring any lost pay or benefits.

While the headlines will publicize the million-dollar awards for the larger businesses who have been found engaging in discriminatory behaviors, smaller companies are equally being held accountable. With not only the restoration of compensation and/or benefits to make an employee whole, punitive and compensatory damages *for a single employee* to recover are based upon employer size:

- 15 – 10 employees, \$50,000.00
- 101 – 200 employees, \$100,000.00
- 201 – 500 employees, \$200,000.00
- 501 + employees, \$300,000.00

Additionally, lawsuits can include claims such as battery or intentional infliction of emotional distress which can increase the award as well as extend personal liability to supervisors. Employers should be aware that they may be responsible for the acts of their supervisors. Additionally, supervisors and even HR personnel may be held personally liable for their own discriminatory behavior or failure to properly address complaints of discrimination.

A review of the lawsuits won by the EEOC, show that no one level of staff, no race nor sex, or other protected class is immune from the discriminatory behavior of employers. We also see that no industry is immune as well, as we have seen allegations arise out of the entertainment, arts, sports and news industries.

Yet even threats of lawsuits are not always the deterrents need to encourage employers to act in the best interest of their employee's wellbeing. Employers should consider the effect of discrimination in the workplace. Discrimination takes its toll on affected employees. Yet, it reaches way beyond the individual being harassed. Discrimination in the workplace has been proven to also effect employee retention, including those surrounding the person impacted. It also has a negative impact on the ability to recruit new employees; increases medical costs; and decreases productivity as lack of focus on production. All counter-intuitive to the culture that candidates are seeking.

Company Image – With social media, word spreads quickly when an employee is dissatisfied. An employer can do little to stop the wild fire that can be created. Employers need to remember that when an employee leaves work, they go into the community and they share their story. What story are they sharing about your company? Employers would be wise to review their reputation within the community. A positive image is impactful to successful recruiting and retention. And don't forget: review culture and turnover, and question if they are in alignment. The answer may surprise you.

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