

# Conflicts in the Workplace

PALMER KAZANJIAN WOHL HODSON LLP



# Palmer Kazanjian

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Founded in 2000 by Floyd Palmer & Larry M. Kazanjian.

Clients range from small businesses to Fortune 500 companies.

Committed to meeting the expectations of every client by developing trust and tailoring offerings to each client's needs.



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Experienced advising businesses and  
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McGeorge School of Law, 2012

Barred in California and Nevada.



# What Is Workplace Conflict?

A dysfunctional or disruptive relationship between one or more employees that occurs when they cannot get along for any reason.

## May exhibit as...

- **Bullying**
- **Verbal insults**
- **Noncooperation**
- **Insubordination**
- **Anger**
- **Frustration**
- **Loss of productivity**
- **Burnout**
- **Complaints**
- **Increased turnover**

## May result from...

- **Irritating behaviors**
- **Personality differences**
- **Differences in work methods**
- **Perceived inequality**
- **Clashing job duties or conflicting job descriptions**
- **Unclear roles**
- **Stress**
- **Lack of communication**
- **Mismanagement**

Remember, some degree of conflict is normal and healthy! And it may be necessary.

A work environment where *healthy* dissent and disagreement is acceptable or even encouraged can spur innovation and increase employee morale and quality of work product.

# What does healthy conflict look like?

- Respectful, inoffensive, and non-aggressive language and tone.
- Tolerance and acceptance of differences and being willing to listen to someone who has a different opinion.
- Respect for all employees regardless of position or tenure.
- Reductions in unhealthy conflict should result in increased productivity, greater motivation, employee loyalty, less litigation.

# Workplace Conflicts: A step-by-step approach...

- Establishing Foundational Policies and Practices
- Identifying and Understanding the Problem
- Involving Third-Parties When Necessary
- Develop a Resolution Plan
- Implement the Plan
- Follow Up

# **Establishing Foundational Policies and Practices**



# Things employers can do to prevent conflict to the greatest degree possible...

Start by fostering a workplace culture designed to preclude unhealthy conflict and establishing policies with this in mind.

- Careful recruitment that determines whether someone is the right fit for the company and its culture. Background checks may be useful.
- Implement employee handbook with written policies; make sure policies are written clearly and are consistent with one another to avoid confusion.
- Policies should address procedure for making complaints as well as conflict prevention and resolution procedures. Employees should know exactly who they can go and what to do if they want to report a conflict or have concerns.
- Policies should make clear when and how complaints will be addressed. Employees must feel confident conflicts will be addressed quickly and fairly.
- Group training for HR and managers. These positions need to be sensitive to employee feelings, compassionate, and make employees feel heard.
- Management should model appropriate behavior to avoid confusion. Be in tune to employee perception of management and how it effects behavior.

# Things employers can do to prevent conflict to the greatest degree possible, cont. ...

- Make sure to *apply* policies consistently among employees, as inconsistency and perceived inequality can be a cause for workplace conflict. If there is variation without apparent reasons, make sure you can explicate and document what the reasons were. Be aware risk for discrimination claims.
- Make sure managers are familiar with and understand policies so they can effectively implement and enforce them.
- Make sure employees understand their role in avoiding unhealthy conflict. They should be aware of what conduct is prohibited and be required to report certain kinds of serious conflicts when they occur.
- Make sure managers are trained not to ignore conflict and how to address it when it happens. People in a supervisory role need to know their responsibility in that capacity and when to report problems up. In many cases, do not encourage employees to try and resolve conflicts themselves once they escalate.
- Expectations for each position should be made clear. Providing and continually revising job descriptions is one way to do this.

# Ideas for Conflict Resolution Policies

- **Open Door :** Employees should be encouraged that they can always discuss concerns with management or HR—this will help stop conflicts before they escalate.
- **Resolution Process:** If a supervisor is unable to resolve, there should be a clear path for the issue to be escalated up in the management hierarchy to be resolved. All complaints will be investigated.
- **Prohibited Conduct:** Employers should identify prohibited conduct such as bullying, threats of violence, abusive conduct, discrimination and harassment, etc. This helps prevent unhealthy conflict and also enables employer to effectively implement discipline when policies of which the employee is on notice are violated.
- **Conflict of Interest:** California law makes policies prohibiting employees dating somewhat problematic, unless between supervisor and subordinate. Beware violating employee privacy rights. However employer can require employee always act in the best interest of the employer and not permit outside interests to interfere with their job duties.
- **Complaints and Investigation:** Make clear that employees are encouraged if not required to complain about inappropriate conduct, the various persons to which complaints can be directed, that they will not be retaliated against for complaining, and complaints will be investigated and prompt remedial action taken.

**Remember that employer is liable for addressing complaints about third-party conduct toward employees!**

# Identifying and Understanding the Problem

**If they have the right training and skills, managers may be able to identify and resolve potential conflicts before they start...**

# When does the employer step in?

**Do not wait for an employee to complain! Managers should be trained to be on the look out for conflicts that require employer attention so they can be reported up and the employer can act before the situation escalates or a hostile work environment is created.**

**Employer may receive an employee complaint or simply notice red flags that warrant further investigation.**

# The Investigation Approach

- The first step is always to talk to the employees who are directly involved to obtain all necessary information regarding the nature of the conflict and the relevant events that have occurred.
- Best to always approach the issue from the perspective of conducting an investigation, to determine not only the nature of the conflict but whether any company policies have been violated.
  - Every conflict or complaint may involve policy violations employer wants to prevent or potentially unlawful conduct for which employer can be liable and that may ultimately become a lawsuit.
  - Employers in California have a legal duty to address and resolve harassment or discrimination of which they are on notice.
  - Investigations promote employee confidence in the organization, enforce company policies, and help prevent internal problems from escalating to the point they negatively impacting the business.



# Types of Investigations

- Internal: A formal inquiry conducted by an employee of the company, who is neutral.
- External: An independent third-party is hired to conduct the investigation.
  - May be warranted in a small organization where there is no neutral employee available to conduct the complaint or where there is no employee with the proper training to do so.
  - For more serious allegations that may result in legal action, the employer should consider hiring a professional outside investigator.

# Steps For An Effective Investigation

1. If conflict is serious enough, may warrant placing one or more employees “on leave” while the investigation is completed, but this likely warrants consulting counsel first.
2. Compile the appropriate facts via witness interviews and compiling relevant documents and evidence.
3. Evaluate the information obtained via step one to come to a conclusion as to what took place and whether employers policies were violated.
4. Decide the appropriate remedial action to take based on the evaluation of the facts.
5. Implement the resolution.
6. Inform the persons directly involved in the situation under investigation of the outcome.
7. Follow up.

# Implementing the Plan

When there is a threat of violence,  
know when to report to law  
enforcement.

# Non-Disciplinary Resolution

- Providing clarification regarding or changing job duties or job descriptions
- Non-punitive or voluntary transfer
- Mediation

# Disciplinary Resolution

- Written warning
- Training
- Suspension
- Punitive or Involuntary Transfer
- Demotion
- Performance Improvement Plan / Last Chance Plan
- Termination

# Legal considerations with transfers...

An involuntary transfer may be considered an “adverse employment action” if it involves materially adverse consequences, i.e. a reduction in pay or loss of benefits, employee’s experience is rendered useless or they would be expected to fail, reduces the employee’s rights, responsibilities or authority, etc.

If the transfer causes the employee to face hardships (e.g., longer commute), it may constitute constructive termination.

# Tools in the Toolbox

- Mandatory sexual harassment training
  - Will include training on abusive conduct...
- Sensitivity training
- Conflict resolution training
- Conducting internal workplace investigations training
- Performance reviews and employee evaluations
- Workplace violence restraining orders
  - This may help if an employee experiences inappropriate behavior from an employee or third party. Can require no contact with business, stay away orders, cannot own firearms, etc.
- Arbitration Agreements.



# Arbitration

- Under an arbitration agreement, the employer and employee enter a contract in which they agree that if a dispute arises, they will be required submit the dispute to binding arbitration rather than bring a lawsuit.
- As of the *Chamber of Commerce of the U.S., et al. v. Bonta, et al.* decision in February 2023, arbitration agreements can be a condition of employment.
- Important for employee to be aware of and sign the arbitration agreement.
- Employer must pay the cost of arbitration.
- Class and representative action waivers may now be part of employment contract.

# Benefits of Arbitration

- Confidentiality – Arbitration proceedings are confidential and private, whereas court proceedings are public.
- Quick and efficient – Arbitration proceedings generally move faster to resolution than litigation.
- Final and binding (generally) – With the exception of certain limited circumstances, arbitration results in an award and resolution that is final and binding, and generally cannot be appealed or overturned.

**Follow up!**

# Ideas for HR Metrics

- Number of complaints or grievances per quarter, year, or other time period.
- Total cost of resolution for complaints, including legal costs, supervisor time, HR personnel, etc.
- Cause of complaints or grievances.
- Average time for resolution of complaint or grievance.

# Fair Employment and Housing Act (FEHA)

- Fair Employment and Housing Act (FEHA) prohibits unlawful discrimination, harassment, and retaliation in the workplace based on statutorily protected characteristics:
  - Race; color; national origin; religion; sex; familial status; handicap (disability); age; ancestry; citizenship; gender identity and gender expression; genetic information; immigration status; marital status; primary language; sexual orientation; source of income; or other arbitrary basis.
- FEHA's anti-discrimination provisions apply to employers with 5+ employees.
- FEHA's anti-harassment provisions apply to employers with 1+ employees.



Q & A

# Thank you for joining us!

We'll see you next time.  
Have a great day!

**Palmer Kazanjian**  
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