

Transcripts are generated automatically using AI and may contain errors or omissions.

Lisa Nagele-Piazza (00:00)

Hi, Lisa here. Before we get started, just a quick note to say that this episode includes discussions of employee mental health crises, including references to self-harm, which some listeners may find sensitive, and I just wanted to give you a heads up before we start this week's show.

Welcome to The FP 5: Five Things for Your 9-to-Five. We help employers make sense of the fast-moving world of workplace law and compliance by breaking down topics into five parts. I'm Lisa Nagele-Piazza from the Fisher Phillips content team.

When an employee stops showing up to the office, talks about wanting to give up, or appears impaired during work hours, managers and HR staff might feel unsure how to respond. But employers can be supportive while also addressing legal obligations, safety, and business needs, it just takes a bit of planning, training, and resources. And that's why we created our Employees in Crisis Handbook, which is a practical resource guide for employers in these sorts of situations.

Joining me is Nicole Kamm, one of the co-authors of the handbook. Nicole is a partner at FP in our Los Angeles and Woodland Hills offices. Nicole, thanks for joining me on the show.

Nicole Kamm (01:16)

Hello, thank you so much for having me.

Lisa Nagele-Piazza (01:18)

So why don't we start by you telling us a little bit about your practice and how you got involved in this area of law.

Nicole Kamm (01:26)

Of course. So I am a kind of a general employment defense attorney. I work with employers in litigation matters such as wrongful termination, retaliation, discrimination, harassment, and so forth. I also handle quite a few wage and hour matters that involve class and PAGA claims, claims under the Labor Code, and then I spend a good deal of my time doing advice and counsel work, working with clients on day-to-day needs that come up, questions, helping with ghostwriting, policy drafting, and just really walking employers through their daily employment law needs.

Lisa Nagele-Piazza (02:01)

Yeah, so a bit of everything. And then specifically with this topic about employees in crisis, how did you get involved in this subject matter?

Nicole Kamm (02:11)

Well, kind of going back a bit, I always say I ended up as an employment attorney because my father was a small business owner growing up and he would come home and talk about the aches and pains of having employees, particularly in California and all the challenges and joys that went with that. And so I really grew up with a good deal of empathy for the business owner, and so I think that kind of drew me to employment law and it's been wonderful since then.

Lisa Nagele-Piazza (02:36)

Yeah, I also started my career as an HR professional in Southern California. Certainly just with how different everything is out in California when it comes to employment law, I got more and more interested in it and decided to go to law school. And you know, this particular topic ...

Nicole Kamm (02:55)

It's a whole other ballgame.

Lisa Nagele-Piazza (02:58)

It's its own place, its own country, could be. But yeah, and this topic in particular was important to me because when I first became an HR manager and a situation came up with an employee like this, I didn't know how to handle it. And fortunately, I had a mentor who guided me through it and I was able to kind of take control of the situation the next time something came up. But I just felt like it's so important to have a plan in place before anything happens. And then hopefully it never does, but you're ready to respond.

Nicole Kamm (03:29)

Absolutely.

Lisa Nagele-Piazza (03:35)

Now, before we start our discussion, I just wanted to say first and foremost that an employer, an HR manager should call 9-1-1 in critical situations, especially if an employee expresses an immediate intent to self-harm. You should also consider directing employees to 9-8-8, which is the National Suicide and Crisis Lifeline. And if you have a specific concern about employee safety, you can also consider requesting a welfare check from local authorities. Of course, you'll want to act in accordance with your company policies as well as legal guidance. And that's what we're really going to get into today.

So the first thing for today, the Employee Crisis Handbook focuses on how employers should respond when an employee appears to be in crisis. So let's talk about some of the situations that can arise and how employers can prepare so that they know what to do in real time.

Nicole Kamm (04:32)

So first and foremost, employers need to think about safety, not diagnosis. If there is an immediate emergency, for example, an employee expresses imminent intent to self-harm, the answer is simple. As you mentioned, call 9-1-1 right away. In some situations, it may make sense to direct someone to 9-8-8, but employers should not try to serve as counselors or crisis professionals in that moment.

For less urgent situations like a no-show or signs of possible impairment, the goal is to have a clear process. If someone stops showing up, that may be a policy issue, but it may also be a sign of a serious crisis. And if someone appears impaired at work, managers should focus on observable behavior, not assumptions, and remove any immediate safety risk.

So the practical takeaway is that employers should prepare ahead of time, train managers to recognize warning signs, teach them who to call internally and make sure HR has a real-time response plan. That way when something happens, people are not improvising under pressure.

Lisa Nagele-Piazza (05:33)

Sure, yeah. And so when you say like, if somebody doesn't show up, it could be a policy issue or a crisis situation. Can you talk a little bit more about that and what that means?

Nicole Kamm (05:44)

Sure. So a lot of employers will have a, let's say, a three-day no-call-no-show policy that then after that happens, they'll consider the individual possibly to have abandoned their position or voluntarily resigned. And it was really important for employers to look a little bit deeper before just leaning into that policy and maybe making a decision.

Lisa Nagele-Piazza (06:05)

Sure, like just don't assume that they just don't want to show up for work and quit their job. It could be something else going on.

Nicole Kamm (06:10)

Exactly. So you always want to do a bit of an investigation and see if you can gather more information before making that final conclusion.

Lisa Nagele-Piazza (06:16)

And you mentioned too, if an employee appears to be impaired, that can be another tricky area where you don't want to make assumptions, but you also want to make sure that you have safety in mind and all. What are some of the steps that employers can take? Like, let's say somebody reports to a manager that, you know, "I think my coworker smells like alcohol" or something like that happens, as we know that mental health issues and substance use can go kind of hand in hand.

Nicole Kamm (06:45)

Right, right. So that is a bit of a complicated situation, but certainly the safety of the workplace is paramount in the safety of employees. An individual does not have to be permitted certainly to be under the influence during work hours, even if it is, for example, lawful use of cannabis or something along those lines. So you are looking for those objective indications that somebody's under the influence either on the premises or during work hours and then take steps in line with your policy or your process to address and make sure that it's handled appropriately.

Lisa Nagele-Piazza (07:22)

Sure, and I guess that means too it's important for managers to know who to contact in HR if something comes up so that they're not, like you said, making diagnoses or trying to figure it out on their own in real time.

Nicole Kamm (07:36)

Exactly.

Lisa Nagele-Piazza (07:42)

Moving to the second thing in our discussion, our Employees in Crisis Handbook highlights several overlapping legal considerations when you're handling employee crisis situations. So what comes to mind for me are laws like the Americans with Disabilities Act, the Family and Medical Leave Act, as well as workplace safety obligations. How did these laws come into play? And how should employers be approaching balancing compliance with employee support?

Nicole Kamm (08:12)

Right. So the ADA can come into play if the employee has a mental health condition or substance use disorder or some other disability that qualifies under the ADA. The FMLA can also come into play if the condition rises to the level of a serious health condition. And of course, we have the complementary state laws that we want to be thinking about. In California, we have FEHA and then CFRA as well. So we're always looking at how those different applicable laws interact with this situation.

Employers also have separate obligations to have workplace safety compliance and then to respond to any known safety concerns. So the challenge is balancing the compliance with those laws with compassion and certainly not ignoring any misconduct or safety risks, but not treating every crisis as purely a disciplinary issue.

Lisa Nagele-Piazza (09:08)

Yeah, and when you say not treating every situation as a purely disciplinary issue, that brings to mind that employers might make some mistakes, especially when they're just responding to a critical incident. So what are some of the common mistakes that employers make in these situations?

Nicole Kamm (09:27)

Certainly jumping to conclusions or making decisions too quickly without really vetting the underlying information. Somebody might be late to work because they're taking a medication that causes them to be drowsy in the morning. Somebody might need an extra break because of something else going on with them personally. And that might actually be a protected activity like a disability, a mental health condition, something along those lines. Certainly you don't want to make assumptions and you want to vet, you know, in every situation it's following the path of that interactive process is a kind of a good post, a guidepost to follow ...

Lisa Nagele-Piazza (10:08)

And by that you mean like under the ADA to have a dialogue with the employee about maybe if they need a reasonable accommodation, that kind of thing?

Nicole Kamm (10:16)

Exactly, exactly. A back and forth, two-way conversation, inquiring with the employee as to their status, if there's anything that the company can offer them, and really focusing on certainly their well-being and their ability to perform their job.

Lisa Nagele-Piazza (10:35)

Sure, and that really brings us to our third thing for today. I wanted to talk about confidentiality specifically, because when an employee expresses an intent for self-harm, when you have substance use issues, all of these things are obviously very sensitive and you want to respect an employee's privacy. They also might be brought to HR or a manager's attention by a coworker who's observed behaviors, who might see a safety risk or has a concern about a coworker, or even an event could happen in the office in front of coworkers. So while needing to respect an employee's privacy, you still need to share critical information with your workforce and potentially with emergency service providers. So what is the best approach to sort of balancing confidentiality and informing people and communicating with others that may have been involved?

Nicole Kamm (11:35)

Well, the best approach is certainly to protect privacy, but not promise absolute confidentiality. In a workplace crisis, an employer may need to share certain information with HR, with leadership, with security, with emergency

responders on a legitimate need-to-know basis. So what employers should do is allow sensitive information, should *not* do is allow sensitive information to spread more broadly than necessary. Co-workers generally do not need to know someone's medical details. If you need to explain an absence or a temporary change in duties, certainly keep it operational and limited.

Lisa Nagele-Piazza (12:13)

That's a good point, not to get into why somebody might not be in the office or why you need to change duties, just that this is how you're operationally changing things. That makes sense.

Nicole Kamm (12:22)

Yes, yeah, this really is an area where training really matters. Managers should understand that medical information does need to be handled carefully, stored appropriately, and shared only when necessary. So the takeaway really is be discreet, be purposeful, and don't over promise confidentiality; safety or legal compliance might require disclosure.

Lisa Nagele-Piazza (12:44)

Sure, absolutely.

This is the FP 5. I'm Lisa Nagele-Piazza. We're here with Nicole Kamm. Nicole is a partner at Fisher Phillips in our Los Angeles and Woodland Hills offices. Just a quick reminder, you can find a link to the Employees in Crisis Handbook we've been discussing in our podcast show notes.

So the fourth thing, when employees return to work after a mental health related leave, they often need additional support as they adjust being back to the work site. So what are some of the resources, policies, practices that employers should be putting in place to facilitate that transition?

Nicole Kamm (13:28)

The return-to-work process should certainly be intentional, and it should be more than an employer saying glad you're back and kind of leaving it at that. A good return to work process can include a discussion about any needed accommodation, modified schedule if appropriate, clarification of expectations and check-ins during particularly the first few weeks back. In some cases, a fitness for duty process might be appropriate depending on the circumstances and the employer's policies.

Lisa Nagele-Piazza (13:59)

Okay, what does that entail?

Nicole Kamm (14:02)

That can be a process where there's a question of whether somebody is in fact ready to return to work and taking a narrowly tailored analysis and looking at the job duties and having an evaluation to ensure that that return is safe and that that person is going to be able to perform their job.

Lisa Nagele-Piazza (14:23)

Yeah, that makes sense. And this is when I start to think just as a former HR manager about the employee assistance program. I know not every employer has one, but can you talk a little bit about that and how that might help here?

Nicole Kamm (14:38)

Sure. Resources like an employee assistance program can certainly be helpful if the employer has one. You know, there are considerations about requiring employees to participate in one, but making it available, encouraging employees to seek all available resources, and offering any additional support is always well-received.

Lisa Nagele-Piazza (14:58)

Yeah, and so you mentioned just maybe like being careful about not requiring an employee to participate. Can you talk a little bit about like voluntary versus mandatory employee assistance program participation?

Nicole Kamm (15:12)

Right, well, certainly employers should speak with their counsel about any sort of considerations regarding requiring employees to participate in those plans, but making those resources available, encouraging employees to participate, and then again, engaging in that interactive dialogue where you're checking in with the employee, finding out what needs they might have, and then considering what the company can provide is kind of the first path to that discussion.

Lisa Nagele-Piazza (15:39)

Sure, and for our listeners that might not be familiar with an EAP, can you just give a broad definition of how it can be a resource?

Nicole Kamm (15:48)

Sure so generally, an employee assistance program is a confidential, employer-sponsored benefit that generally offers free short-term counseling and other support services for employees.

Lisa Nagele-Piazza (16:00)

Anything else that you think is important to know when it comes to the transition back to the workplace?

Nicole Kamm (16:07)

I think just the continual check-in, know, monitoring employees' well-being overall. A lot of times situations might calm down and then pop up again. And so just really having that clear line of communication with your employees is important.

Lisa Nagele-Piazza (16:26)

And here's the fifth and final thing for today. Employee mental health and crisis response is an increasingly urgent workplace issue. So why does this guidance matter so much now?

Nicole Kamm (16:38)

This guidance matters because these issues are showing up more and more in workplaces and employers are being asked to respond in situations that are sensitive, fast moving and legally complex. Certainly post COVID, know, this has been an area that we've seen a dramatic increase in attention.

Lisa Nagele-Piazza (16:55)

Yeah, and guess especially when you have so much more of the workforce that's remote, might feel isolated, it brings in a different dynamic.

Nicole Kamm (17:03)

Definitely. These situations can raise questions about safety, we've talked about, accommodation, the leave rights, privacy. So there's a lot of moving parts when it comes to the best way to handle them.

Lisa Nagele-Piazza (17:16)

Yeah, so any sort of final suggestions when it comes to the broader implications for employers when they're managing risk, compliance, and well-being, like you mentioned, compliance and compassion?

Nicole Kamm (17:31)

The broader implication is that these type of situations are no longer just an HR best practice. They really are workplace risk management issues, compliance issues, and truly leadership issues. So it's important that employers take a top-down approach when it comes to creating protocols and responding consistently, both legally and organizationally.

Lisa Nagele-Piazza (17:54)

You mentioned that training and communication is so important for this situation. So what do you think that that training should entail in terms of knowing who to contact and how to respond?

Nicole Kamm (18:07)

Well, certainly starting with HR and management, supervisors, doing internal training and offering support to managers on how to assist through those situations. And then certainly offering it to all employees so that all employees are aware of the resources that are available and having different options in terms of who to turn to. So if they don't possibly feel comfortable going to their manager, they could go to another person in leadership or HR.

Lisa Nagele-Piazza (18:36)

Yeah, that's a really good point there in terms of somebody's comfort level and talking to someone, as well as people take vacations. They have meetings, they have offsite things. So, you never know when a situation is going to come up. So it seems really important to have multiple points of contact, both for comfort and just for availability, too.

Nicole Kamm (18:55)

Always.

Lisa Nagele-Piazza (19:02)

So we've been chatting about some pretty heavy topics. Let's change it up with a few lighthearted questions before we sign off so our listeners can get to know you a little better.

Nicole Kamm (19:12)

Sounds great. Yes.

Lisa Nagele-Piazza (19:13)

Are you ready?

Nicole Kamm (19:14)

Yes.

Lisa Nagele-Piazza (19:15)

What do you do to de-stress after thinking and writing about these topics?

Nicole Kamm (19:20)

I love reruns of old comedies, watching them with my son: Goldbergs, Brooklyn Nine-Nine, those kind of fun shows.

Lisa Nagele-Piazza (19:28)

Nice, absolutely. One of my favorites is Party Down.

Nicole Kamm (19:32)

Great one.

Lisa Nagele-Piazza (19:35)

So, and Party Down, speaking of LA, give us the best and worst things about living in LA.

Nicole Kamm (19:41)

They're probably pretty basic answers, but the best is the weather, and the worst is the traffic. Always the traffic.

Lisa Nagele-Piazza (19:49)

Those are the first things that come to mind to me too. What movie could you watch over and over?

Nicole Kamm (19:55)

My go-to is always the classic Gen X movie: Breakfast Club. That's my ultimate favorite.

Lisa Nagele-Piazza (20:02)

That's one of my favorites too. I was a huge Molly Ringwald fan growing up.

Nicole Kamm (20:08)

Love it. Anything John Hughes, I'll watch.

Lisa Nagele-Piazza (20:10)

Yes, absolutely. And when you're driving, do you prefer music, podcasts, or silence, or something else?

Nicole Kamm (20:17)

Always podcasts. That's my go-to.

Lisa Nagele-Piazza (20:20)

Nice. Well, we like to hear that. Then fifth, the most important question. What restaurant has the best free bread in America?

Nicole Kamm (20:30)

I still love Cheesecake Factory's wheat and white option combo. I think you can't go wrong with that.

Lisa Nagele-Piazza (20:37)

Yeah, I haven't been to an Olive Garden in forever, but the breadsticks just come up for me right away in my mind. Well, that's all the time we have for now. Thanks again for being on the show, Nicole.

Nicole Kamm (20:49)

Thanks so much for having me.

Lisa Nagele-Piazza (20:53)

And as always, thank you for listening to the FP 5. For other insights from Fisher Phillips, visit fisherphillips.com and be sure to check out the Employees in Crisis Handbook that we've linked in our show notes.

If you enjoyed the show, make sure you're subscribed and rate us on your favorite podcast app. We'll see you next week.

And just a reminder, listening to this podcast doesn't constitute legal advice and doesn't establish an attorney-client relationship. For more information, visit fisherphillips.com/legal-notices.