



Does Your Dealership Have A Locker Room Mentality?

Insights

2.03.14

[Dealership Update, No. 1, February 2014]

If a year ago you had heard that conduct in an NFL locker room had resulted in a complaint of harassment and bullying, you might have assumed that the alleged victim was a female reporter. Few would have guessed that the alleged harasser and alleged victim both would be NFL linemen capable of bench pressing refrigerators. After all, these players function in an environment where taking and dishing out mental and physical abuse is all in a day's work.

The very thought that some of the alleged conduct occurred in a locker room makes the allegations even more surprising. Locker rooms are not known as being bastions of sensitivity but rather as places where "boys can be boys" and they can blow off steam by engaging in "good natured" fun. Locker rooms are so sacred and special that they have their very own language – locker room talk. Players who accept a spot on the team tacitly understand and accept the unwritten locker room rules and all that goes with them.

One of those rules seems to be that it's a man's world and the sensitive and thin-skinned are not welcomed. Another rule appears to be that players should not complain but if they have the nerve to do so, the complaint must be kept within the organization. In short, there appears to be a perception or belief that regular workplace conduct rules do not apply due to the unique nature of the business.

While there is no dispute that many normal workplace rules do not apply to professional football teams, neither they nor other employers are excepted from the rules prohibiting harassment, discrimination, and retaliation. Nevertheless, some employers or their managers act as if these rules do not apply to them or their type of business. In those situations, boys are allowed to be boys and locker room talk and related conduct is an accepted and in some cases, an expected part of the culture. A mentality exists in some workplaces, most often those dominated by males, that anyone who signs on for the job (*i.e.*, accepts a spot on the team) also signs on for the jokes, comments, the grabbing and other forms of "harmless" horseplay.

In other words, if someone is not willing or able to tolerate "innocent" jokes and comments about race, age, gender, religion, disability, national origin, etc. or they don't find talking about sex or being propositioned acceptable, they simply don't fit in. Putting it another way, the faint of heart and thin of skin need not apply. Get used to it or get out because those who complain will pay the price. In sports terms, these undesirables will be "cut" from the team.

Unfortunately, even in today's environment, some owners and many managers find nothing objectionable about conduct of this nature. Many times when a complaint is made, the person who complained is the "bad guy" and obviously not a good fit. This response is not surprising because many management personnel came up through the ranks and endured or participated in the same shenanigans and therefore find nothing wrong with it.

Some have the attitude that since it's fun and there's never been a problem, what's the big deal. Employees should be able to have fun at work. Putting a lid on the offensive and in many cases, illegal conduct, would chill workplace enthusiasm and create an environment where no one wants to work. Others believe that "good" employees who make a living by pushing the envelope will leave if they are required to work under these constraints. (Ironically, most managers would not have the same outlook and tolerance if offensive conduct of this nature were directed at their spouse or child.)

Employers that tolerate the locker room mentality may find their views shortsighted and risky for business. Turning a blind eye to the conduct creates potentially expensive and disruptive harassment and discrimination claims. Retaliating against those who complain about offensive conduct creates additional risks. Defending your company (or yourself) on the basis that the employee was okay with or participated in the conduct requires admitting that management allowed the conduct to occur. Likewise, trying to justify the conduct or the company's failure to stop it because the conduct is generally acceptable in your industry, likely would only increase the amount of the punitive-damage award. There are no official or unofficial business exceptions to these rules and there is no viable defense theory that the employee knew what she was getting into when she accepted the job, even if you warned her that it would happen (another bad idea).

Allowing this type of work environment is dangerous for a number of other reasons as well. Industries and companies with reputations for tolerating conduct of this nature inadvertently limit the pool of employees who would be interested in working there. In an age where females and minorities have significant clout in the marketplace, smart business people recognize the economic value of having those groups represented in their workforce. Overcoming negative stereotypical views of a particular industry and attracting different types of candidates is a constant challenge. Allowing a workplace environment to exist where those folks don't feel welcome, comfortable and safe simply is not good business.

So what should you do, if anything? Good policies are a must. Manager training is important. Consistent enforcement is essential. Take affirmative steps to get rid of the locker room mentality if you have one. Don't retaliate against those who raise concerns. Create a culture where your employees' fun doesn't have to be at the expense of others. Once your managers and employees understand from the company's actions that a locker room mentality will not be tolerated, many of these problems and risks will simply go away.

For more information contact the author at TCoffey@laborlawyers.com or (404) 231-1400.

Related People



Tillman Y. Coffey

Partner

404.240.4222

[Email](#)