

(From *HR Magazine*, September 2004)

Ten Ways To Sabotage Dispute Management

Look at—and avoid—ways to guarantee failure of an internal dispute resolution program.

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September 2004 *HR Magazine*

More than ever, employers are recognizing that disputes involving their employees need not be unexpected, protracted, expensive and unpleasant. Indeed, many employers have devised sophisticated

systems for managing employment conflicts toward a consensual resolution. These systems aim to identify problems, bring them to the attention of managers at the appropriate level and address them to the satisfaction of all concerned before they ripen into full-blown “disputes.”

From this perspective, being served with a complaint or a notice of claim before a state or federal agency is evidence of a company’s managerial failure. Most employers would prefer to learn about an employee-related problem themselves—early—so they can fix it, rather than have a lawyer tell them later, when a “fix” is much more expensive.

Although dispute management programs can vary according to the needs of each employer, they usually are based on essentially the same three-stage model.

In the first stage, management-level devices provide employees with safe ways to voice concerns. Examples include open-door policies, peer review boards, ombuds offices, “800” numbers, complaint boxes and HR intakes. With assurances of confidentiality, professionalism and nonretribution, these methods are usually successful at identifying and resolving worker complaints and, in the process, improving the quality of the workplace.

In the second stage, mediation is used to permit employees and employers to articulate their interests and seek ways to resolve their disputes with the aid of a skilled and neutral third party. The process is nonadjudicatory, meaning the mediator has no authority to impose an “award.” Like more informal methods, it offers not only the potential to leave the working relationship intact, but also the prospect of improving it. Companies using mediation report a high success rate, typically resolving about 80 percent of cases.

The third stage is an adjudicatory process—either arbitration or litigation—in which an arbitrator or a jury renders a decision. In a well-designed and professionally managed employment dispute system, very few conflicts should reach this stage.

Arbitration, while theoretically less expensive and time consuming than litigation, is nevertheless an adversarial process and tends not to contribute to improved employee relations and management practices.

Litigation is not really a management technique at all, but rather the absence of a better alternative. Filing a charge with an enforcement agency or initiating a lawsuit are the employee’s only recourse when the employee perceives no internal means of dispute resolution or when all internal mechanisms have failed. Litigation is so expensive and destructive that very few parties ever want to reach it.

Fortunately, today’s employers have access to all the resources necessary to help them create a dispute resolution program built on this basic model and engineered for success—one that keeps disputes from reaching the third stage.

And yet, despite these resources and the dispute management experiences we have gained collectively, many individual businesses develop dispute management programs that fall on their faces.

Why? Employers fall prey to common mistakes. Given what we know about dispute management, you'd think it would be hard to mess this up. But recent high-profile court opinions invalidating certain popular dispute resolution approaches demonstrate that employers who really want to fail can always find a way. With that in mind, here is a look at 10 surefire ways to make your dispute management program an utter disaster. (If you insist on doing it right, see "[Prescription for Success](#)".)

No. 10: Leave Disputes To the Employment Lawyers

Don't worry: If your employees are asserting legal claims under Title VII, wage and hour laws, and the Age Discrimination in Employment Act—that sort of thing—that's a job for the lawyers to take care of. Simply tell your attorneys to get defenses ready for any claim, and then wash your hands. If you win, great. If you lose, it's the lawyers' fault. No down side! Besides, lawyers are cheap.

Don't worry about the fact that your one-size-fits-all defenses will be applied to unique situations and to employees with varying skills, weaknesses, anxieties, confidences, hopes for success and needs for respect. And don't waste time actually identifying and addressing problems in the workplace. As far as you know, there aren't any problems anyway. Let employees sue, and then trust the lawyers to make them sorry they ever did.

No. 9: Just Impose Mandatory Arbitration

The problem is lawsuits, right? So just require everybody to submit employment disputes to arbitration. What could be simpler?

It goes without saying that all your managers have excellent human relationships skills and all your employment policies are enlightened, so employees can't have any legitimate problems in the workplace. It's just a question of whether you're going to let these whining shirkers drag you into court or whether you make sure the hearing takes place in a nice private room with no discovery, no judge or jury, and no publicity.

Don't worry about the legality or fairness of imposing mandatory binding arbitration; the lawyers can work out the details. And who cares if employees challenge the fairness of your arbitration agreement? The company can easily afford the time and money that will take. Just think of the ultimate reward: What could be better than arbitrating every claim?

No. 8: Copy Someone Else's Program

This is an extremely attractive piece of advice because it lets you deliver a tested product to senior management without doing very much work. It has the added attraction of allowing you to blame someone else when the product ultimately fails.

Prescription for Success

Much of dispute management is based on common sense and on inclusion and recognition of legitimate interests—including emotions. If you follow your best HR professional's instincts and keep in mind the following principles when creating and administering employment dispute systems, you won't go far afield.

- Don't argue needlessly. Employers with well-managed programs report almost no arbitrations. Don't lose credibility with employees by insisting on mandatory binding predispute arbitration as the centerpiece of your process. You'll be picking a fight over a mechanism that may spawn its own litigation and will seldom be needed.
- Get backup from top management. The corner office sets the tone and is the ultimate authority. It is crucial that top management deliver the message to managers and supervisors that their support of the program is not voluntary—everyone is expected to work to make it a success.
- Involve all stakeholders in the design. Pay particular attention to constituencies within the company that might feel threatened by, or object to, the program, and seek their input and support. Make them part of the design process and ensure that the program reflects their concerns. Include them in the "roll out" as enthusiastic endorsers.
- Benchmark your program. Compare your system to other companies' and get as many ideas as you can. Decide what metrics you will use to measure the program's progress and collect benchmark data before the program begins. Continue to collect the data—as well as anecdotal information—over the life of the program so you can quantify its impact.

Just call up Halliburton, UBS, Johnson & Johnson or any of the other foresighted companies with excellent, cutting-edge employment dispute resolution systems. Ask for a copy of their brochure, strip off their company's name, slap on yours and call up Kinko's for a couple thousand copies. Presto!

What does it matter if your company has a distinct corporate ethos and different management style from the firm that developed the plan you "borrowed"? Who cares if your employees are located in a different place, produce different things with different processes, have a different compensation scale and hold different career expectations? So what if they are subject to different legal standards? And who says that any of these considerations have anything to do with what works or doesn't work for you? Hey, it's like ponchos—one size fits all, right?

No. 7: Don't Bother The 'C-Suites'

The chairman, the CEO, the COO, the CIO—these folks don't want to be bothered by this kind of thing. Just go ahead and introduce the new dispute resolution system to the employees on your own say-so. You're well respected, and people will do what you suggest. You don't need senior management's authority, endorsement or buy-in.

You can bother them when you discover that management and rank-and-file employees alike have failed to take your program seriously, don't use it themselves and don't refer people to it. Now you've got lawsuits in full swing, and it's time to get the bigwigs ready to testify. They'll really be grateful you didn't waste their time launching your program.

No. 6: Ignore Junior Managers

Before the ink is dry on your nifty new employment program, some self-important junior manager or supervisor from the line will come into your office and make some sarcastic remark. She'll say her authority is being undermined. She'll say she doesn't like the idea of a peer review board, an "open-door" system, a complaint box, an ombuds or anything else you've come up with to encourage employees to raise problems and concerns.

You know exactly why she is complaining: She's afraid the complaints might be about her. She'll tell you she resents the system and won't work to make it a success. She has no intention of appearing in a mediation to justify her management decisions or having her supervisory skills second-guessed.

But you know how to handle this situation: Ignore this person. That's right—just smile and ignore her. She'll get over it. After all, you're well respected, right? Besides, junior managers who mouth off are like motorcyclists who don't wear helmets—a self-correcting problem.

No. 5: Don't Ask Employees—Tell 'Em!

Is this a business or an encounter group? We're talking here about a program whose purpose is to provide employees a safe and effective way to resolve their problems outside of court. Why on earth would you want to get their input on how it should be designed? Just design it yourself so it is as easy as possible to administer, and then announce it. It'll be fine.

- Pour resources into the early stages. The "sweet spot" develops during the first stage of the program. That is where people haven't yet taken legal positions, relationships can be strengthened and costs are lowest. Train employers and employees to address and resolve conflicts at the lowest possible level of the organization, and as early and directly as possible.
- Implement the program incrementally. "Test-drive" the program at one site or within one department before moving to the next. When rolling out the program, prominently feature very senior leadership (for example, a videotape of the CEO endorsing the program and stating the business case for it) and very junior leadership (such as initially skeptical first-line supervisors). Listen to any dissatisfied user of the program and make adjustments accordingly.
- Market the program. This means both internal marketing, to ensure trust and use by employees, and external marketing, to publicize your company's strength. A good employment dispute resolution program is an employee benefit and should distinguish your company as a better place to work. Use it to tout your company. Be proud of your success.

No. 4: Don't Measure

You know where you're starting from—it's where you are now. Why would you need to measure that? This whole business about "benchmarking" is a waste of time and resources. You don't need to measure the program's results. Nobody cares whether you have been successful in reducing the number of employment discrimination claims, the cost of outside counsel or the time HR professionals spend in handling complaints. No one will be interested in knowing whether the program has reduced turnover, increased company morale or attracted employees from competitors.

This goes for measuring the ongoing effectiveness of the program, too. What's the point? There's certainly no need to "tweak" the program down the line. If there were a way to make it better, you'd do that right now.

And don't worry about having to justify the program at budget time—this sort of thing never gets cut.

No. 3: Don't Waste Money on Training

This isn't rocket science. We're talking about an off-color joke at the water cooler, a gripe about an unfair supervisor, a policy that someone claims wasn't applied consistently. The people doing the complaining don't need to be trained to express themselves effectively, and the people doing the listening already have ears and don't need to learn to use them.

We all know intuitively how to deal productively with an indignant, irate and disrespectful person, whether that person is our boss or our subordinate. (I, personally, have never been misunderstood by any subordinate, and I've always had excellent communications with every boss I've ever worked for. Haven't you?) So don't waste time and money training people who will participate in this system.

No. 2: Once You've Done It, Just Run It

If it makes no sense to train people in preparation for the program's success, then it certainly makes no sense to monitor employee reactions to the program.

The last thing you want to do is waste valuable resources finding out whether employees are satisfied with the program, whether they trust it and whether they would recommend it to other workers. What do they think—that it's their program? Forget that stuff—just get them back to work. If they're not happy, you'll find out soon enough.

In short, don't seek feedback, don't keep your ears open for rumors of retribution by managers and, by all means, don't find out whether employees tend to leave dispute resolution sessions angrier than when they started.

Oscar Wilde had the right idea when he wrote: "Ignorance is like a delicate, exotic fruit: Touch it, and the bloom is gone." Don't let the facts get in the way of your evaluations. When people ask you how it's going, just keep smiling. After all, you're well respected, right?

No. 1: Class Actions? Who, Me?

Just take things one step at a time. This case, the next case, and so on—treating each one as a separate and unconnected incident. Don't pay any attention to patterns you notice. Don't cross-reference to see if complaints involve one particular manager or department more frequently than others. Ignore any indications that a disproportionate number of claimants tend to be from a particular age group, race, gender or wage classification.

And if you notice any of these trends, be sure to do nothing about it. Tell no one. It can be our little secret.

Class actions are things you read about in the paper. They happen to other companies, not to yours. In the worst of cases, a class action will provide many more opportunities to spend time with your lawyers. Isn't that what you wanted anyway?

Editor's note: This article should not be construed as legal advice or as pertaining to specific factual situations.

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