



Between a Rock and an HR Policy:

Ethical Challenges Facing HR Professionals

December 14, 2022

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Today's Agenda

- Meet Your Speaker
- What is “Ethics in HR,” Anyway?
- The Importance of Ethics in HR
- So... What's an HR Professional To Do?
- Some Scenarios
- Social Media Tips/Guidelines
- Wrap Up/Questions



Meet Your Speaker

Keith Black

- Penn State University (B.A. Labor and Employee Relations); Villanova University School of Law (J.D.)
- Eight years in private employment law practice
 - Littler – San Jose, CA; Blank Rome – Philadelphia, PA
- Employment Counsel, HR Director, Director of Employment Practices at AstraZeneca
- General Counsel and VP of HR at DecisionOne Corporation
- VP of Human Capital Consulting at Aon Consulting
- VP of HR at Hersha Hospitality Management, Philadelphia Inquirer
- Chief People Officer at Law School Admission Council
- Faculty at Villanova University (Employment Law and Foundations of Strategic HR Management)



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At EPO, our primary areas of focus include:

- Workplace Investigations
- Respectful Workplace/ Civility Training (Sexual Harassment Prevention)
- Human Capital Advisory (HR functional assessments and org design, interim HR leadership, strategic HR alignment)
- “On Demand” HR Advice (unlimited telephone and email HR advice and counsel to supplement existing HR function without adding headcount)



What is “Ethics in HR,” Anyway?

- The term “*ethics*” is derived from the Greek word *ethos*, which means character, habit, customs, and ways of behavior.
- Ethics is also referred to as moral philosophy.
- The word “*moral*” comes from the Latin word *mores*, which signifies customs, characters, and behavior.
- In short, *ethics* refers to what ought to be done to achieve what is good and what should not be done in order to avoid evil.



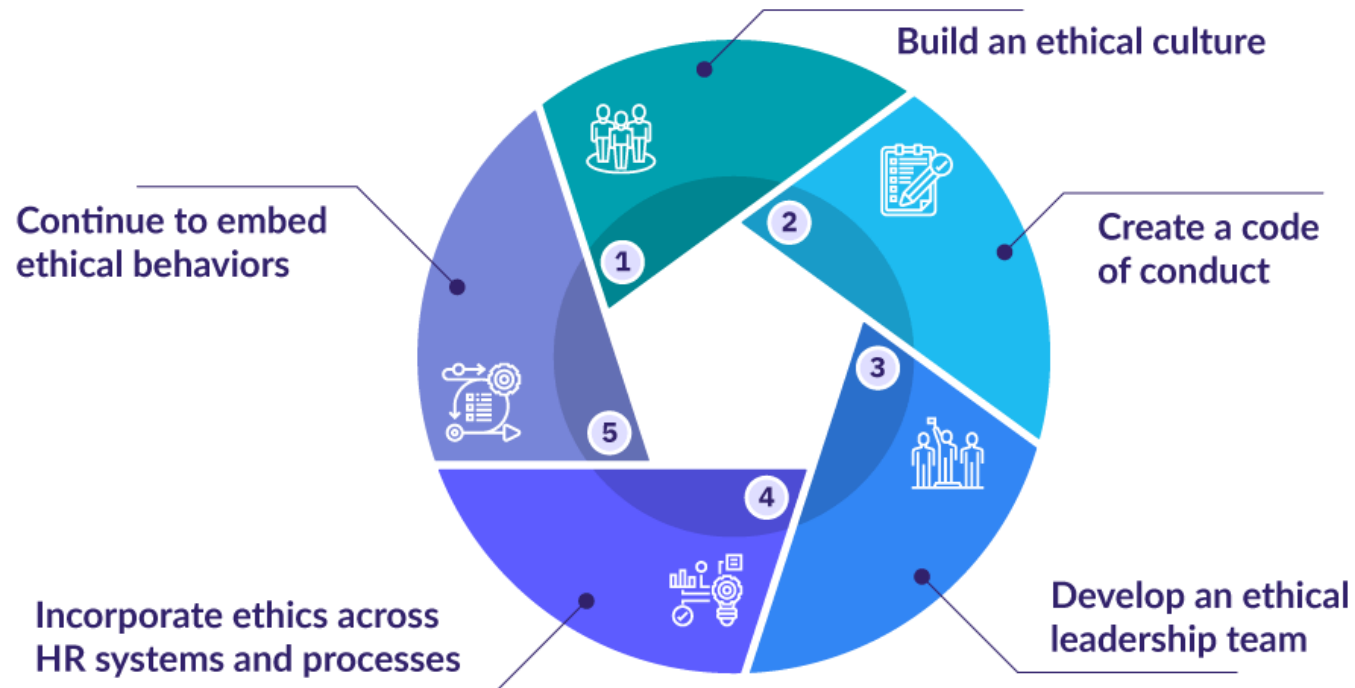
What is “Ethics in HR,” Anyway?

- Due to its unique, people-centric role, Human Resources is often on the frontlines of ethical problems concerning employees and employers.
- HR practitioners engage in multiple roles, creating the opportunity for ethical dilemmas to occur.
- It is the professional duty of HR professionals to promote ethical business practices and contribute to their organizations' ethical success.



What is “Ethics in HR,” Anyway?

How HR Can Help Create an Ethical Environment



The Importance of Ethics in HR

Benefits of an Ethical HR Function

- Promotes honesty and fair treatment among workers, thereby attracting and retaining the best talent.
- Facilitates creating and maintaining a **Respectful Workplace**, ➡ greater engagement, less turnover.
- Contributes to a stellar reputation in the community and industry, leading to increased and sustained productivity.
- Reduces legal costs/exposure and financial risk.
- Reduces negative publicity/attention.

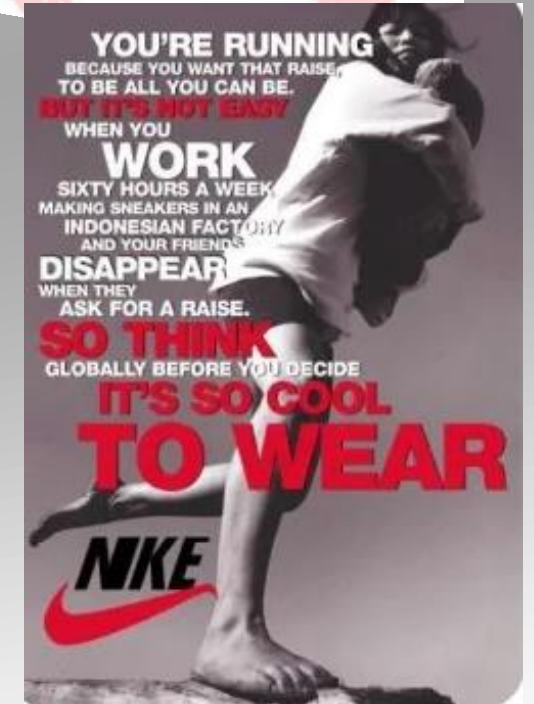


The Importance of Ethics in HR

Cost of Lack of Integrity and Ethics

Unethical behavior constitutes a business risk and can be costly at the organizational level:

- Legal sanctions, fines, penalties, verdicts.
- Termination of business relationships.
- Damage to reputation, customer retention, and loyalty.
- Low levels of employee satisfaction and retention and higher levels of absenteeism/turnover.
- Increased unethical employee behavior.
- Negative brand image in the community.



So.... What's an HR Professional To Do?

Being an ethical HR leader means being confident in your moral decisions and effectively communicating them to employees.



Making an ethical decision requires three things:

1. **Commitment:** “The desire to do the right thing regardless of the cost.”
2. **Consciousness:** “The awareness to act consistently and apply moral convictions to daily behavior.”
3. **Competency:** “The ability to collect and evaluate information, develop alternatives, and foresee potential consequences and risks.”

- Josephson Institute of Ethics at UC San Diego



So.... What's an HR Professional To Do?



Some Scenarios. What Would You Do?

Scenario #1

Is HR there to protect the employer or to be an advocate for the employee?

The Philadelphia Inquirer

OPINION

HR is not your friend: A Philly lawyer on sexual harassment and #Metoo | Opinion

Complaining to HR is inconsistent with long-term employment. It's better to have a job than a case.

Some Scenarios. What Would You Do?

Scenario #2

What do you do as an HR leader when an employee comes to you in “the strictest confidence” complaining about a manager's conduct that is significantly impacting the employee's mental and physical health and well-being?

She begs you not to “make a big deal about it.” She doesn't want to “get anyone in trouble or make a scene.” She just wants you to listen.

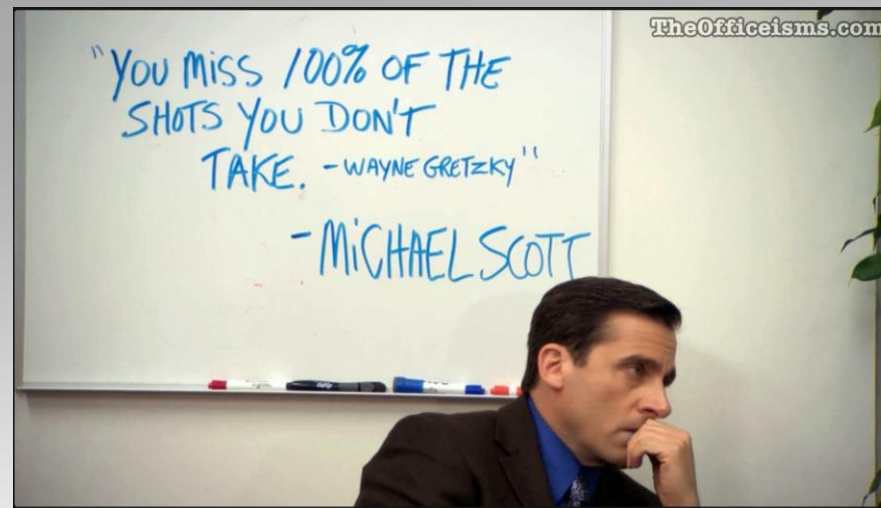


Some Scenarios. What Would You Do?

Scenario #3

Michael, a manager, comes to you and says he has to “fire Phyllis immediately because of her poor performance” and he needs your help creating a paper trail. He has no documentation of issues or communications with Phyllis but tells you he is happy to go through his calendar and write up documentation, backdating the write ups to reflect the dates he thinks he talked to her.

Then she can be fired.



Some Scenarios. What Would You Do?

Scenario #4

You complete a long and exhaustive search for a Controller and you and the CFO decide on an excellent final selection.

The CFO calls you the next day and says she had her daughter “do some digging” on the candidate and, based on her Facebook and Instagram posts, it seems she is “outspoken” and “a bit of a religious nut.” Also, she seems very supportive of “*that* political party,” and the CFO cannot understand or accept that.

Based on these revelations, the CFO wants to look at other candidates and move away from the selected candidate ASAP.



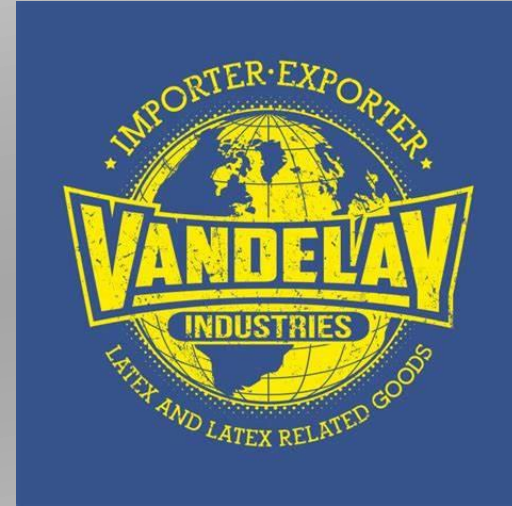
Some Scenarios. What Would You Do?

Scenario #5

A former employee, George, posted on FB that he thought his termination from Vandelay Industries was unfair. Another employee, Kramer, responded with a post, “Sorry to hear that. You should think about getting a lawyer and taking them to court. You could contact the labor board too.”

A third employee, Elaine, submitted a screenshot of the conversation to her manager, Jerry, who now wants to fire Kramer for violating Vandelay’s Social Media Policy. Vandelay’s policy prohibits employees from using social media to discredit or damage the company.

Jerry felt that Kramer’s post was a clear violation of this policy, requiring his immediate termination.



Social Media Tips/Guidelines

Most workers are employed “at-will”- meaning they can be lawfully terminated for a good reason, a bad reason, or no reason at all – just not an illegal reason.

Offensive social media posts fall within the realm where employers generally have free reign to discipline an employee (particularly if the employee identifies where they work on their profile!)

While employers can prohibit social media use while workers are on the clock, they must be careful.

Employees venting with one another, posting on social media, or otherwise conversing about work conditions or pay is considered protected concerted activity under the NLRA — whether the workers are unionized or not.

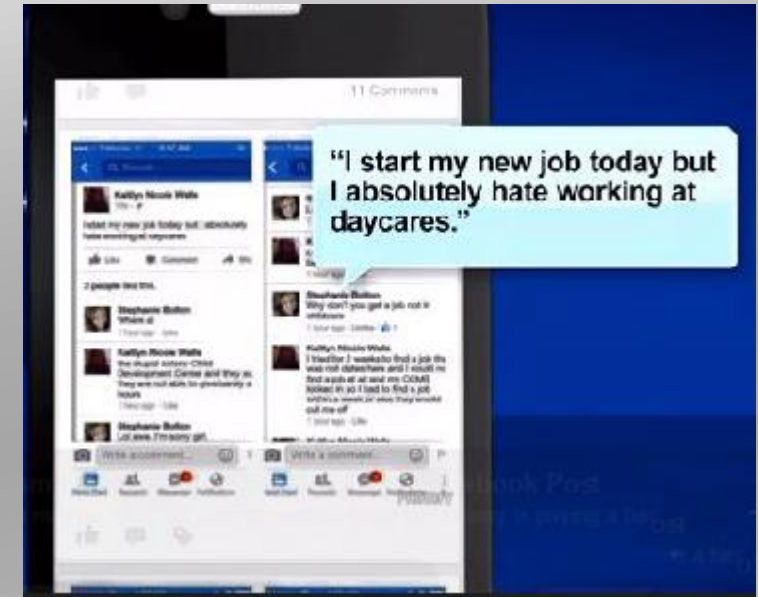


Social Media Tips/Guidelines

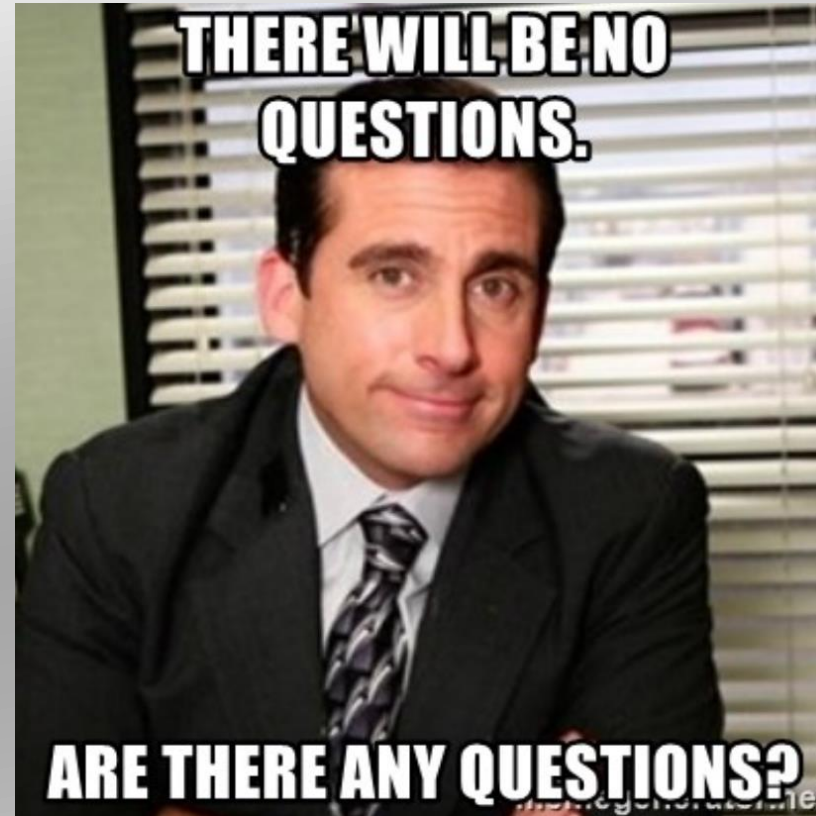
Generally, employers cannot fire an employee for:

- Posts that share truthful statements about working conditions, like harassment or an unsafe workplace;
- Comments that indicate the employee's support for or interest in joining a union;
- Suggesting to other co-workers that they contact a lawyer to get information about their rights in the workplace; and
- Demographic information like the employee's race, sex, age, religious affiliation or pregnancy.

But there is a fine line. Workers posting complaints online for all to see, and not engaging with other co-workers, may *not* be considered protected language under the NLRA.



Questions?



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