

Some Policies Do More Harm Than Good

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By Pamela Babcock

No matter how well-intentioned, poorly crafted employment policies not only might annoy employees and frustrate supervisors, they also might generate negative publicity and create other risks, experts say.

In June 2009, the town council for the City of Brooksville, Fla. voted that municipal employees must use deodorant and wear underwear as part of a dress code approved by a 4-to-1 margin.

Two months earlier, a New York City Whole Foods Market was required to pay unemployment benefits to an employee fired for allegedly taking a tuna fish sandwich destined for the trash after his shift was over, a violation of store policy.

Libba Letton, a spokeswoman for Whole Foods, wouldn't comment on the specifics of the case but said the company has a "very clear and explicitly-communicated" policy about sampling from the case or from food about to be thrown away.

"We want our team members to be able to talk about the food and products we sell ... but we have a specific procedure for doing that for financial reasons and because we need to keep track of inventory," Letton said. "If you sample food that is not destined to be a sample under the policy, then it's considered stealing. ... Most other retail food outlets have similar policies."

"Employee policies should set the tone for a productive, respectful work environment," said Leila Bulling Towne, a San Francisco Bay area-based executive coach. "If you cannot very easily and fluidly—and with confidence—explain in two to three sentences why a policy is necessary and how the guidance it provides leads to better business and engaged employees, then it's time to hit the delete button," she said.

One Attorney's Advice

Some policies cause legal problems, employee turnover, bad public relations or all of the above, particularly when they are misinterpreted or applied inconsistently.

Some policies are essential, such as an Equal Employment Opportunity policy to protect against harassment and discrimination and a leave policy under the Family and Medical Leave Act (for employers with 50 or more employees).

But Anne Bancroft, a partner in the labor and employment practice group Fox Rothschild in Princeton, N.J., said employers get into trouble when they "commit themselves to policies that they don't need to have."

She said this is particularly true for policies that are difficult to enforce. For example, an employer might have strict attendance or progressive discipline policies appropriate for a collective bargaining setting, but in a nonunion setting "you don't really need them," she said.

A nonunion employer might have a "five absences and you're out" policy or a discipline policy that requires an oral and written warning before someone is terminated, but "many times supervisors don't follow those policies, and then if you start making exceptions you open the door to claims of discrimination or unfair treatment," according to Bancroft.

The other issue, she noted, is that “without fail, the fifth absence that’s going to require you to fire the person is for a very good reason, such as the employee’s child is in the hospital or a family member has passed away, and the policies end up doing more harm than good.”

Avoid Rigidity, Stupidity and Danger

When it comes to implementing policies that aren’t required under law, “It’s important to train supervisors as to what you’re trying to accomplish culturally and your business reasons for these policies,” according to Bancroft. “If the supervisor understands this, he or she will be much better able to answer challenges to the policy, which can avoid complaints down the road.”

For example, she said that personal appearance policies “should not be applied rigidly” because employers might have a legal obligation to make exceptions to accommodate an employee’s disability or religious beliefs.

Donna Flagg, a workplace expert and founder of The Krysalis Group in New York City, said an unfortunate and particularly problematic policy is one that forbids personal or romantic relationships because “oftentimes people choose the other person over the employer, and companies lose good, talented employees as a result.”

But human capital strategist D. Kevin Berchelmann, president of Triangle Performance in Spring, Texas, said that “far too many policies are simply stupid at best, and dangerous at worst.” At a typical “box-like breakfast joint” recently, Berchelmann encountered a pleasant and reasonably efficient server with a blank nametag on her blouse. When asked about it, the restaurant manager said corporate policy “doesn’t require the name tag to actually have her name on it. ... There’s nothing I can do if she’s wearing a name tag—any name tag.”

Yet some policies can be downright dangerous. Berchelmann said a \$250 million industrial services company he once worked for implemented a strict policy requiring managers of employees injured on the job to explain the incident and leadership involvement in a companywide memo.

After one accident, the safety bonus was reduced by half, and after the second it was eliminated. As a result, fewer accidents were reported, he said. “Shooting the messenger is the pinnacle of foolish,” Berchelmann noted. “The bad news continues; you simply don’t get it anymore.”

Lessons Learned

When it comes to the city policy requiring deodorant and underwear, Towne questioned how a manager could enforce such a rule and said that trying to do so “will put that manager in a more uncomfortable spot” than if he or she chose not to enforce it.

“The likelihood is good that there was a sudden need to communicate with people about this,” added Flagg, who said the city would have been better off just telling the offenders and leaving the policy off the books. “People often create policies because they lack the courage to address the situation face to face.”

Meanwhile, Whole Foods has been dealing with its own public relations challenge. The tuna fish story has generated more than 300 comments on the [New York Times web site](#), many of them critical.

“All of these people got upset and said ‘I can’t believe Whole Foods is throwing food in the trash,’ but that’s just not true,” Letton said. Whole Foods donates 800 pounds of food weekly in New York City through America’s Second Harvest.

A couple days after the story broke, Letton and her staff went online to try to respond to angry readers.

“The lesson here was more of a PR issue,” Letton said. “While your policy may be obvious to you and your team members, if it’s misrepresented in the media or in social media, it can trip you up.”

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