

WISE COUNSEL

HR professionals make legal decisions all the time but sometimes the best decision involves calling a lawyer

BY TRACEY STARRETT, M.ED, CHRP

HR PROFESSIONALS ARE OFTEN CALLED on to provide employment law advice to their organizations and, depending on the scenario, the line between lawyer and HR professional gets blurry. In fact, a question many HR professionals sometimes ask themselves is, “Should I call a lawyer on this one or deal with it myself?” Not surprisingly, both HR and legal experts agree on the answer.

WHEN TO CALL THE LEGAL CAVALRY

One HR professional who appreciates this is Dave Keith, senior manager of employee relations at BMO Financial Group. As a former litigator, Keith’s legal background is a great advantage to his HR practice, but he also recognizes HR’s limitations. “HR people on my team are very skilled in employment law but there are definitely times when an employment lawyer needs to be involved.”

“Dave Keith encourages HR professionals to look at **past case histories.**”



Janice Rubin, of Rubin Thomlinson LLP, advises legal involvement at entry and exit stages of the employment relationship, like employment contracts, mass terminations, for-cause terminations and, as she puts it, “terminations with a twist.”

Andrew Paterson, corporate counsel with The TDL Group Corp. (a.k.a. Tim Hortons), agrees: “Whenever an

issue turns litigious, it is best for the HR professional to hand the matter over to the legal department.” It’s also good practice to seek legal advice when knowledge of rules of evidence may be important.

“Sometimes when the legal news is not what your senior management team may want to hear, it may be more palatable coming from an outside

source such as the lawyer,” says Erin Kuzz, of Sherrard Kuzz LLP. There are also times when “issues of privilege are important and the organization may want to have legal privilege attached to the issue.” Other times, it may be as simple as “when the hair on the back of your neck starts to stand up,” she says, including situations when you’re “dealing with disability issues or accommodation, as this area of law has changed so much in the past few years.”

LEARNING FROM THE PAST

Keith encourages HR professionals to look at past case histories. Determine what worked and assess what could have been done differently to strike the right balance. “If your model is to call a lawyer on every issue, you may want to consider in-house counsel or ways to become more knowledgeable in HR law,” he says. A junior HR person may call on a lawyer more frequently until they have established some level of comfort with the grey areas. However, knowing your own skill set and keeping current on legal updates will help build confidence.

RELATIONSHIPS MATTER

Experience and knowledge in HR certainly help deal with many legal issues, but it’s not a substitute for legal training. Understanding the respective strengths and weaknesses of both HR and legal can actually contribute to the development of a good relationship.

Erin Kuzz encourages teamwork between HR and legal counsel. “Through collaboration, our goal is to make HR look like a star by avoiding litigation, or by developing the best contracts,” she says.

Now, that’s a role not too many HR people would turn down. **HR**

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