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Leadership: Fixing your sexual harassment apparatus to mitigate risk

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In a piece I wrote for *ethikos*, titled “The dangerous duality of sexual harassment investigations and ethical risk mitigation,” I discussed some of the difficulties with internal investigations, what to look for, and the importance of maintaining your ethical bearing when dealing with these kinds of investigations.^[1] I also examined that the behavior that exposes firms to risk doesn’t come from the one who had the courage to speak up. In this piece, I’ll dive deeper into the specifics of how to lead, fix your apparatus or enhance an already well-oiled machine. But to be clear, this is just a general overview and not a substitute for a comprehensive program assessment.

As with all positive things (and ironically, negative ones too), it starts with a thought and then a decision. You have to make the decision that you’re not going to tolerate sexual harassment and that you are going to effectively eradicate it through proactive behavior that more represents the lion than the lamb. I’m a strong proponent of motivational techniques in leadership, training, and compliance. If done skillfully, the “lion effect” can produce positive motivation instead of compulsion. But the nature of a lion is always still aggressive.

Building the foundation

The reworking of your program (and other programs that have nothing to do with this topic) may be achieved by engaging several measures that stem from six foundational behaviors.

Understand how policies, communication, and leadership work

There are levels to this thing. To a certain degree, dealing with this issue has little to do with existing written policies, because at the end of the day, policies are people. If you go high enough on the leadership ladder, essentially every single written policy can be overridden by a person. Policies aren’t independent sources of authority that can withstand their own weight. When written policies are violated, it’s because a person with the right amount of juice (or nerve) ignored it or sanctioned it to be violated. And if the policy is allowed to be violated long enough by weak, incompetent, or corrupt leadership, then what most people fail to realize is, the new (wrong) way of doing things becomes the “legitimate” policy as a result of the practice and pattern of doing things wrong—which matriculates into your culture. Now of course the caveat to this is when a policy mirrors the law. Laws should be able to stand on their own weight and can’t be legally overridden (in theory) by anyone. But as it relates to equal employment opportunity (EEO) corporate policies and the law, when people contemptuously violate it, they don’t view their behavior as breaking the law, because they will probably never really see the inside of a jail cell, irrespective of what lines and laws were crossed by the harassing behavior. But prison sentences and being plastered on the front of the news, newspapers, and social media tend to change that.

Understand that policy is what’s done and not what’s written

The policy of an organization isn't what is written; it's what's done daily. Leadership attempting to effect change must have a firm grasp of that concept. If not, like in so many other organizations, you will be waving a policy in the air, trying to separate yourself from an employee, but in reality, you'll be pronounced husband and wife. Why? Because it will be established that irrespective of what was written, something completely different was done every day that became the standing policy of your organization. Leadership must get a grasp on what's done versus what's written and ensure that there's no daylight between the two. If your training staff ever says, "This is how it's written, but let me tell you how we really do it," then get ready to pay—and pay big. You should never hear those words at work! In effective spaces within leadership, there's no room between what's privately communicated, internal general communications, external communications, training, the written policy, and what's done daily.

Although I would never recommend having poorly written policies, in theory, you could have weakly written policies but, as a leader, make sure that everyone knows your strong position on a topic. Thus, the culture of your organization will mirror your well-known position, because ultimately, you are the one with the juice to effect change. This is why any significant failures in this area are a direct result of your overarching leadership.

As a leader, your subordinates should know exactly how you feel about important workplace issues. And if they do the very thing you said not to do, it won't end well for them. They should know it. If they don't, it's not the fault of your staff or your communications team. That responsibility lies squarely on the shoulder of the king or queen. You are the policy! Your veracity on an issue is in fact the voracity of the policy. If you want yourself to be known, get the policy (you) out there in a way that leaves no doubt on your stance. On serious issues that can degrade morality, delay productivity, violate the law, expose you to multiple layers of profound risk, embarrass the company, besmirch your reputation as a leadership team, hurt your product, and—most importantly—hurt an employee, a "memo" that everyone gets through their company email just won't due.

Are you a good leader with strong ethics? Be a poor communicator, and you won't be for long!

Use EEO metrics like performance goals

In leadership, isn't every facet of our governance a part of our performance? I view the totality of my leadership abilities in conjunction with the totality of how I perform in every area under my purview. If sexual harassment cases and their resolutions were viewed and categorized just like other performance measures, the EEO epidemic would start to dissipate immediately. Just like revenue, enrollment, production, and other benchmarks, if bonuses were attached to EEO successes and failures, I bet your concern for sexual harassment cases would go way up, which means incidents would tend to go way down. Attaching this issue to the wallets of those in charge would go a long way. No, I'm not suggesting that a CEO or executive leader gets paid less because someone files a complaint or even if a complaint is substantiated. But I am recommending that there be thresholds, including, but not limited to, the quality of education and programs introduced during a CEO's tenure and other nontraditional benchmarks for how these cases are adjudicated. Skillfully, this can be done without putting undue pressure for a particular outcome, but it will take strong boards with the courage to do it.

Yes, there will always be leaders of a low ethical bearing who find a way to put the kibosh on complaints so that it won't potentially affect their bonuses. But if the structure and accountability mechanisms are set up properly, it will be impossible to do so irrespective of how much they want to sequester the truth. Also we should remember that if a person would try to fudge the statistics on EEO claims in order to secure a larger bonus, then they represent the same low-hanging fruit that got us here in the first place. And undoubtedly, they're already fudging the numbers in other areas anyway. You just haven't caught them yet! People of low character will always be with us and should never be the reason to not try something new.

Mandatory participation

Sexual harassment mitigation should not be confined to a certain area or division of your organization, because wherever there are people, it can exist. This is why I recommend getting other “non-EEO entities” involved in the good fight, because in the end, it’s everyone’s responsibility. And as leaders, we are responsible for the welfare of our staff in the workplace.

I can’t wait to be the boss!

Sometimes it seems like everyone wants leadership titles and leadership money, but no one wants to lead. Just because you’re the English chair, customer service manager, healthcare lead, anti-bribery manager, or in charge of something that has nothing to do with EEO, that doesn’t exclude you from EEO responsibilities. Upon promotion, staff should be made exquisitely aware of that through training. You may not be the one conducting the investigation and deciding the final discipline, but as it relates to the welfare of your subordinates, you’re not a pedestrian. The pace of the leader determines the tempo of the pack, so it all starts with you. I find that the greater the daylight between a sense of responsibility in leadership and staff, the greater likelihood for risk. A culture of ownership must be implemented through training that emphasizes ownership of this issue. Interestingly enough, when that culture of ownership is achieved, it not only mitigates risk, but also enhances overall productivity as well. This concept cross-pollinates across multiple channels and disciplines company-wide, and I highly recommend it.

When I see ten cases of sexual harassment happening in one area under one boss or division, even if there are five thousand people in that division—and even if the boss is far removed from the average worker bee—the spotlight needs to be put on the leader for failing to make a policy known or reducing the policy to the paper tiger that it is. Even if done passively, which we know also influences culture, there is an assignment of responsibility that needs to be addressed. As leaders, we have the ability and resources to communicate how we feel about every single issue under our command. Bright minds from all quadrants of your organization should be tasked with coming up with timely and serious-minded ideas to combat sexual harassment incidents and create a culture anathema to this kind of predatory behavior. Then there should be a process whereby those ideas and concepts are matriculated into policy, procedure, and action through education—no blue ribbon panels, no résumé pads, and no long, drawn out processes—a unit with a bias for action.

Shift the ‘footnote education’ paradigm

Most organizations make it a point to do check-the-box training on EEO issues to cover themselves in the eyes of the law. “We taught it, so we’re legally covered.” Mentioning something or even taking an hour or two, or even a day, to explain such a complex, high-risk, and devastating topic doesn’t constitute an education. It constitutes a footnote. I write about the “checkbox as a primary source of training” mitigation mentality extensively, because it’s a very strong cultural issue that can offer a false sense of shelter.

Don’t have a little more time or money to spend on educating the workforce about EEO issues? Then don’t complain about the plaintiff’s attorney letter of demand. This all goes back to the ethical concept and proper way of governance in doing the right thing, the right way, up front, the first time: the ultimate way to save money and dilute risk. Everything else is a weak leadership and management model ultimately designed to make you pay more, pay longer, and magnify your risk overall exponentially. It’s about the pre-risk, not post-risk mitigation posture.

Take stock of your investigation team

Make sure your investigation team members feel supported and understand that you support their endeavor to come to just conclusions based on the facts. They are a key element of the compliance team, and you are counting on them. Their fact-based conclusions have everything to do with mitigating risk, protecting your institution, and protecting the lives of the people who came to them for help—as well as the lives of someone who may have been falsely accused. Exonerating someone who was lied about is just as important as finding someone who broke the rules. As a leader, they should hear those exact words come out of your mouth. Countless investigations that can never seem to get to the bottom of anything won't help anyone. It's critical to your risk matrix.

Your EEO office isn't "the dark side of the force." Don't make everyone stay away from them. At some juncture, certain elements should work with your training team (who should be your greatest influencers in terms of communicating your agenda), as well as some of your other best and brightest minds, to hash out solutions and pre-risk strategies. This is another area where strong action-based leadership counts. In some cases, you as a leader will need to assign your best and brightest to assist, though they may not have volunteered. But here's the good news: If you're a strong leader who leads from the front and consistently treats your people well, whether they volunteered or not, they'll not only do as they're told, but they'll contribute and excel in these kinds of collaborative assignments. You know who your best resources are. Put them on the case! From a leadership standpoint, your EEO team isn't just your director, coordinators, investigators, and attorneys. It's everyone.

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