
Taking Steps to Reduce the Cost of Workplace Conflict

Workplace conflict can be very expensive for businesses — and that expense has been increasing over the last 10 years, due to higher jury verdicts, attorney fees and other costs, as well as an increase in the number of these conflicts. Businesses can reduce their liability in this area by taking steps to prevent conflicts before they arise, and to resolve them as early as possible, before they grow into full-blown disputes.

Harrie Samaras and Judy Weintraub

2013-05-29 12:00:00 AM

ADR

Workplace conflict can be very expensive for businesses — and that expense has been increasing over the last 10 years, due to higher jury verdicts, attorney fees and other costs, as well as an increase in the number of these conflicts. Businesses can reduce their liability in this area by taking steps to prevent conflicts before they arise, and to resolve them as early as possible, before they grow into full-blown disputes.

Costs of Workplace Conflict

Conflicts can arise in many different work-related settings. While the most common conflicts arise between a manager and subordinate, or between co-employees in the same group and location, conflicts can extend to managers and employees in different departments or in different locations, between the company and its business associates (e.g., customers, vendors, contractors, joint venture partners, investors), and between a company and its surrounding community or a governmental body. Regardless of the situation, the longer the conflict ensues, the greater the cost to the company.

Workplace conflict is occurring more frequently and with higher costs than ever before. The average jury award in wrongful termination lawsuits, for example, is now \$700,000, up from \$600,000 10 years ago, according to the Conflict Solutions Center. The average cost of litigating an Equal Employment Opportunity Commission claim is \$162,000, and the EEOC receives 80,000 discrimination complaints annually. Employees win 55 percent of employment claims.

In addition to the out-of-pocket expenses, such as litigation costs and attorney fees, companies incur other losses, including morale problems, work disruption, low productivity, employee turnover, theft of intellectual property, adverse publicity and loss of customers. One study revealed that, on average, 30 to 40 percent of the daily activity of supervisors and managers is devoted to dealing with workplace conflicts. If a company could reduce its conflicts by half, it could gain an extra 20 percent in productivity from its managers alone — the equivalent of a whole extra day of work every week.

Organizations that adopt early dispute resolution systems report a 50 to 80 percent reduction in litigation costs alone, according to Olive Branch Consulting. Implementing these systems takes careful planning, time and effort, but, given the substantial savings that can result, most companies find they are well worth the time and expense.

How Companies Can Reduce the Cost of Conflict

As with any other important project, good project-management principles help ensure success, including:

- Obtaining senior management and union buy-in and active support of a conflict management program.
- Establishing a cross-functional team to design and implement an integrated program.
- Defining the goals of the program, setting parameters, establishing a timeline and allocating resources for the project team.

A direct correlation exists between the quality of the work environment and the amount of workplace conflict. Conflicts arise more often in workplaces with an atmosphere of substantial mistrust, a perceived lack of fairness and lack of respect toward employees, and misunderstanding. Improving the workplace environment will result in fewer unhealthy conflicts, as well as other tangible benefits. One of the first steps the project team should take is to conduct a workplace assessment to evaluate the quality of the work environment and examine the nature of the disputes that previously have occurred.

A workplace assessment would include evaluating elements such as:

- The corporate culture — whether employees perceive that they are treated with respect and fairness, and whether there is an atmosphere of collaboration and collegiality.
- Employee morale — determining the extent of employee dissatisfaction by looking at, for instance, turnover rates, absenteeism, grievance claims and injury claims.
- Company policies, procedures and other documentation, such as the employee manual, collective bargaining agreements, training courses, and contracts with customers and vendors.
- Historical data concerning disputes to determine causes, trends, costs, results, length of time between initiation and conclusion and other factors.
- The current mechanisms for handling complaints, including their effectiveness, whether they are consistently utilized, whether the employees are satisfied with the mechanisms, how quickly cases are resolved, the quality of the resolutions and how effective the training is.

After it has conducted the assessment, the team should identify and prioritize the problems, and examine alternatives for remedying them. Alternatives could include implementing various changes to improve the work environment, such as adopting a team approach or enhancing communications; providing training in handling conflict; and developing and implementing an early dispute resolution program.

Within the realm of early dispute resolution programs, several approaches exist. Three common structures include:

- Peer reviews, in which selected employees are trained to serve as mediators to help resolve conflicts among fellow employees.
- Ombuds programs, in which a person skilled in conflict resolution is hired to facilitate the resolution of conflicts in the workplace.
- Mediation involving selection of an outside mediator to facilitate the resolution of disputes.

In one corporate conflict-prevention program that the authors assisted in designing, the company was experiencing a large number of similar disputes within its foreign offices. An investigation determined that a cause of the disputes was inconsistent adherence to corporate policies and procedures. The resulting program that was recommended consisted of developing a clearer set of policies and procedures, improved communication of those policies, enhanced reporting and monitoring to ensure compliance, establishing a mediation program with a trained mediator in each geographic region to resolve disputes quickly, and training in implementing the new policies and the new mediation program, as

well as in conflict resolution techniques. The company also adopted a fallback mechanism, in which disputes that were not resolved in mediation within a certain timeframe would be arbitrated before one arbitrator selected from the roster of the International Centre for Dispute Resolution — the international arm of the American Arbitration Association.

After determining what actions to take, the team should develop an implementation plan. This plan may include drafting new policies and procedures, developing training courses, preparing communications to company employees about the program, identifying data to collect (e.g., number of disputes presented, number of disputes resolved and by what ADR process), developing metrics for determining whether the program is effective, and identifying the resources needed to develop, implement and monitor the program (including budgeting). Before rolling out organization-wide changes, the team should initiate a pilot program, testing changes on a small scale for a period of time, such as six months, and then tweak the program based on the results of the pilot program.

The company should periodically review the data and metrics collected to evaluate whether the program is meeting the company's needs and to assess the program's efficiency and effectiveness, to determine whether any improvements are needed. Have the number of disputes been reduced? Are disputes being resolved more quickly? Have the costs of conflict decreased? Are employees satisfied that the system is user-friendly, that they are given an opportunity to be heard, and that they are being treated fairly? Are the resources that have been allocated appropriate?

Implementing a systematic approach to prevention and early resolution of conflicts takes firm commitment from top management. The development and implementation can take significant time and resources, often involving key employees for several hours per week for a year or longer. And widespread positive results often take time to manifest as an organization becomes comfortable with the program and disputes are resolved in their normal course.

The long-term benefits, however, should substantially exceed these short-term frustrations. Not only will the number and severity of conflicts be reduced, but employee morale, productivity, collaboration and innovation will increase, all of which have a beneficial impact on the bottom line and contribute to the company's success.

Harrie Samaras *is the founder of ADR & Law Office of Harrie Samaras and co-founder of Advanced Business Law Resources. She focuses her practice on commercial cases, including disputes involving intellectual property, business and technology and other commercial contracts. She can be reached at hsamaras@ablr.biz.*

Judy Weintraub *is the founder of Weintraub Legal Services and ACCORD LLC, and co-founder of Advanced Business Law Resources. She has more than 25 years' experience negotiating complex commercial transactions and has handled more than 50 mediations and arbitrations. She can be reached at jweintraub@ablr.biz.*

Reprinted with permission from the May 29, 2013 issue of The Legal Intelligencer. © 2013 ALM Media Properties, LLC. Further duplication without permission is prohibited. All rights reserved.