

# Stay Out of Court

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DO YOU HAVE COLLEAGUES in the human resources field who work for Fortune 500 companies? Have you wondered why those colleagues don't seem to experience the same threat of litigation as you experience in your job? Perhaps the answer to that question lies in the fact that many Fortune 500 companies employ various forms of alternative dispute resolution (ADR) programs in resolving workplace conflict before conflict results in litigation.

Whether in the context of hiring, performance evaluations or progressive discipline, there is a human resource objective of hiring and retaining your most valuable employees, with the collateral objective of minimizing employment litigation. That is true in ADR programs as well. However, there has been a tendency for employers to evaluate ADR programs purely from a legal risk management perspective, while disregarding the human resource objective. The intent of this article is to introduce somewhat of a new paradigm, shifting the emphasis from legal risk management to the human resource component of ADR programs. There are many ADR programs which can not only minimize the risk of employment litigation but resolve interpersonal disputes before they ever rise to that level:

## OPEN DOOR POLICY

An open door policy is probably the most common feature in all organizational workplace systems. However, it has almost become trite in many organizational cultures. An open door philosophy implies that the supervisor or manager believes in open dialogue and encourages employees to come into his or her office and talk through differences or questions that may arise. In order to be effective, an open door policy must be communicated in a broad manner and be reinforced as a core element of the organization's culture. Experience with the effectiveness of open door policies has mixed outcomes. Some observers suggest that it is highly overrated as an accepted vehicle of conflict resolution for several reasons: supervisors are not trained to problem-solve with employees, supervisors are too busy to accept the role and employees feel there is a high risk of retaliation for using the open door. On the other hand, many observers believe that despite these obvious barriers, the open door model still resolves about 90 percent of all employee problems.

## Using Dispute Resolution Programs to Avoid Employment Litigation

As in most employment policies, the key to a successful open door policy is adequate training of supervisors, who must be schooled in conflict resolution and communication skills.

## OMBUDSMEN

Another popular option in the design of ADR programs, particularly for larger organizations, is the organizational ombudsman. An ombudsman is a neutral or impartial official within an organization who may provide informal and confidential assistance to employees in resolving work-related concerns and who may also recommend organizational change based upon concerns which arise. Studies from several large organizations have concluded that the ombudsman process is cost-effective when considering the accompanying decrease in employee litigation and turnover.

## MANAGERIAL MEDIATION

Many progressive organizations are increasingly providing basic mediation training to line managers, and a few have designated conflict resolution as a key supervisory competency. In managerial mediation, the manager uses his or her authority to bring disputing employees together and explore mutually

acceptable solutions. An organization that provides managers with skills training for mediation makes a significant statement about the role its supervisors are to play in the way it wants employee conflict to be resolved. An increasing number of progressive organizations are providing this basic conflict resolution training to supervisors and managers as part of their toolkit.

#### PEER REVIEW BOARDS

This approach has been used in many blue collar manufacturing orga-

nizations for several years, often for union-avoidance purposes. In some organizations, decisions of the peer tribunal are final and binding, while in others, decisions are only advisory on the employee or management. For most peer review models, employees are preselected and trained by human resource personnel or an outside consultant. The core assumption behind the peer review process is the notion that employee disputes should be resolved through internal mechanisms, not in litigation. Another assumption

is that resolution of claims by peers is acceptable to the employee. Of course, this model also assumes that peers can be capably trained as fact-finders and decision makers.

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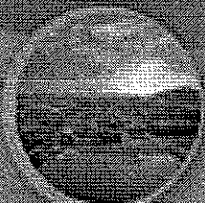


Opponents of this process argue that its time as a useful approach has passed because of the increased complexity of workplace disputes. It can be viewed as administratively difficult due to employee turnover requiring constant retraining; it requires staff resources to manage the process; and many claimants desire a court forum. Nevertheless, over time, it has shown to be a valid problem-solving model.

#### EXECUTIVE PANELS

Executive panels in a workplace system generally represent the opportunity for employees to present their claims to a panel of the organization's senior executives. The concept behind an executive panel assumes that employees feel that upper executives would be objective and potentially sympathetic to their claims. Panels typically have three to five executives or managers who are not connected to the employee whose claim is being presented. This feature works in a variety of settings but is most common in medium-sized organizations with accessible executives. Research indicates that a surprising number of employees prefer this option and feel no hesitation in raising certain issues with upper management.

With the proliferation of employment litigation, the cost of considering one or more of these programs may be well worth consideration. Again, not only can they reduce employment litigation, but also serve the larger human resource purpose of retaining valuable employees. ●



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