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News You Can Use

HR Stories You Might Have Missed

Microaggressions and toxic workplaces: 3 court rulings provide key lessons for HR

June 14, 2023

Microaggressions at work are the everyday slights, insults, putdowns and offensive behaviors that, cumulatively, take a toll on employees from underrepresented communities.

They can be accidental – or intentional. Either way, left unchecked, microaggressions can negatively impact careers, reduce employee engagement and lead to burnout.

And if that's not enough to give pause, allegations of microaggressions at work are now appearing in lawsuits against employers.

Here are three recent examples – and what HR can learn from them:

1. Complaints about microaggressions lead to termination

In New York, an employee identified several microaggressions that, in her view, showed bias against her as a Jewish person.

Questionable comments

For example, in late 2019, the employee and her supervisor discussed a vacant position on the team. The employee suggested a colleague who was also Jewish for the role. The supervisor allegedly responded by saying she didn't "want an old Jewish woman running a multicultural department." She also allegedly said she wanted the Jewish colleague to be "fired or forced to quit."

In another instance, a colleague allegedly commented that there were "too many white Jewish CEOs in positions of power and it was time to get them out."

Other microaggressions create toxic workplace

In early 2020, the company produced T-shirts that proclaimed a commitment to fighting various forms of bigotry and racism. But anti-Semitism was not included in the initiative, the employee said.

She also noted one instance where an "all-staff" meeting was scheduled on a Jewish holiday.

Then in mid-2020, the employee contacted company leaders about establishing an Employee Resource Group (ERG) for Jewish people. The company already had several ERGs for other populations, including Latino, Black and LGBT employees.

Even so, company leaders raised concerns about the proposed ERG and dragged their feet during the approval process. Over the next few months, the employee followed up on the ERG-approval process, to no avail. In October and November, the employee sent emails stating the need for the Jewish ERG to address anti-Semitism and microaggressions.

On Nov. 30, the employee was fired for "poor performance," including "a lack of organization, failure to communicate timely, weak writing skills and a lack of sensitivity to DEI issues."

Prior to termination, she had not received negative feedback on her performance reviews. Moreover, she was not put on a performance improvement plan, as recommended by company policy.

In addition, she was offered a severance agreement in exchange for a release of claims against the company. Relevant here, company policy says employees may receive severance benefits for eligible terminations, such as "a reduction in force, a reorganization or elimination of position, but *not* for 'unsatisfactory performance'." (Emphasis in original.)

The employee declined the severance offer and filed a complaint with the EEOC.

Meanwhile, the company posted a job opening for a similar position.

Then, the company "suddenly expressed renewed interest in the Jewish ERG" after a long period of no movement, the court later pointed out, referring to an email that was sent immediately after the company received notice of the employee's EEOC complaint. The email asked for "a quick update on the status of [the Jewish ERG] launch."

Discrimination and retaliation claims

Ultimately, the employee filed a lawsuit. Among other things, she alleged the company fired her and retaliated against her because she's Jewish.

The court analyzed the claim under the familiar burden-shifting framework outlined in *McDonnell Douglas Corp. v. Green*.

Here, the employee stated a valid *prima facie* claim of discrimination, so the burden shifted back to the company to state a nondiscriminatory business reason for its decision, the court explained.

When the company stated its business reason for termination (here, poor performance), the burden shifted back to the employee. She had to show the proffered reason was a pretext for bias.

She made that showing, the court said, because the “timing and context of the ‘performance’ concerns” cited by the company give rise to an inference of illegal discrimination. Simply put, the supervisor never raised performance concerns until the employee started advocating for the creation of a Jewish ERG.

As such, a reasonable jury could find the termination was, at least in part, motivated because the employee is Jewish, the court decided.

The employee also alleged the company retaliated against her for advocating for the Jewish ERG and complaining about microaggressions against Jewish employees at the company.

After going through the same burden-shifting framework, the court held a reasonable jury could conclude the employee “was fired in retaliation for complaining about anti-Semitism and promoting a Jewish ERG to address it.”

The case continues.

Lesson: This court decision shows that microaggressions can support claims of discrimination and retaliation.

What HR can do: It’s up to HR to set the tone of an organization. To lead by example, be aware of your own words or actions. And if you’ve inadvertently committed a microaggression, model accountability for employees. Listen to the individual’s comments with the intent to understand their perspective – and not to reply.

de Souza v. Planned Parenthood Federation of America, Inc., No. 21 Civ. 5553 (LGS), 2023 WL 2691458 (S.D.N.Y. 3/9/23).

2. Worker says she was targeted by racially motivated microaggressions

In Virginia, a Black employee claimed white co-workers committed microaggressions and discriminated against her on the basis of her race. But she didn’t provide many specific details about the alleged misconduct. She also claimed that she tried – and failed – to get the employer to implement DEI initiatives.

Regarding one alleged incident, she complained to HR about a white co-worker who allegedly “shook her finger in [the employee’s] face.” HR set up a peer mediation session, but the employee wasn’t satisfied with the response, as it allegedly didn’t resolve the toxic work environment or the harassment she endured.

The following month, the employee was told that “her services were no longer needed.”

She filed a complaint with the EEOC, alleging she “was subjected to racially motivated microaggressions” by a white co-worker and that HR failed to “investigate or correct the problem.”

She then sued under Title VII, but the court dismissed her claim.

To state a valid Title VII claim, the employee had to show, among other things, that she was treated differently than similarly situated employees outside her protected class.

Here, the court said the employee’s “allegations are wholly insufficient and lacking in any factual detail” that would allow a jury to conclude that she was treated differently based on her race. Her claim that HR set up a peer mediation session to address “one microaggression,” but otherwise did not take any steps to stop the perceived harassment did not “rise above speculation,” the court said. Case dismissed.

Lesson: This ruling shows that vague accusations don’t cut it in court. Employees who pursue legal claims are going to have to give specific details outlining their side of the story to get their case to a jury.

What HR can do: You’ve undoubtedly heard this before, but the answer here is document, document, document. Be prepared to give your own detailed account of exactly what happened, including the employee’s perspective of the situation, HR’s response to the complaint and the outcome.

Howard v. Blue Ridge Health Dist., No. 3:22-cv-00003, 2023 WL 2541132 (W.D. Va. 3/16/23).

3. Employee's solution to microaggressions: Ghost the employer and sue

A Black employee in New York said she noticed "supremacist behavior" and was subjected to racially motivated microaggressions from the start. Her co-workers' alleged comments contained stereotypical views about Black employees, particularly about women of color.

Among other things, she said her co-workers frequently complained about former employees of color who "smelled" and "only worked long enough to get unemployment." She claimed they used racial slurs and made racist jokes. She said she felt "put on notice" by the comments made about other Black people and said she was the "first to be accused of mistakes." She claimed she tried to discuss the matter with her supervisor three times, but he allegedly "failed to hear her grievances."

The employee said that on Jan. 9, 2020, she "went into a full depressive episode." She stopped going to work that day.

The next day, the general manager purchased the company. As the new owners, he and his wife reached out to the employee and told her to come back to work with a doctor's note. She did not reply. Then, on Jan. 17, 2020, the general manager "terminated [the employee] via text."

The employee filed a complaint with the EEOC and later sued the company as a *pro se* litigant (meaning she filed on her own behalf without the help of an attorney). There were a couple of procedural issues with her claim, but the court overlooked those problems and said even if she had filed the lawsuit on time, the claim still would've failed.

To state a valid race discrimination claim under Title VII, the employee had to show, among other things, that she had at least some evidence showing the employer "acted with discriminatory motivation."

She alleged that she was terminated by text, but she didn't provide any evidence suggesting that the decision to fire her was based on racial bias, the court said. Nor did she allege the employer made any race-based remarks as part of the termination.

Moreover, the employee's own complaint admitted that she stopped showing up for work and did not respond to the employer's attempt to reach out to her.

The employee failed to state a valid race discrimination claim, the court said. Case dismissed.

Lesson: This outcome shows that employers' hands aren't tied when employees decide to ghost the company over perceived misconduct.

What HR can do: This probably sounds like a no-brainer, but this case provides a clear reminder to always keep things professional – especially when the circumstances are frustrating. It's important to point out that we don't know exactly what happened in this case. It didn't play out in court, so we don't know whether the allegations would've been proven true. Here, what we can say is that the new company owner tried to reach out to an employee, to no avail. Based on what we know, it looks like the owner kept this termination professional, which ultimately played a factor in the court's decision to dismiss the claim against the company.

Dubie v. Buffalo Concrete Accessories, Inc., No. 21-CV-744-LJV, 2022 WL 17822125 (W.D.N.Y. 12/20/22).

[Read this article online](#)

Blame that tune: Music at work can be sexual harassment, court says

June 15, 2023

Is it possible for music played at work to constitute discrimination based on sex?

Yes, the U.S. Court of Appeals for the Ninth Circuit has ruled in a new decision.

Music that has "sexually derogatory and violent content, played constantly and publicly throughout the workplace, can foster a hostile or abusive environment," the court said.

2 key points

Two key additional findings from the ruling:

- Harassment can give rise to a Title VII claim even if it is not targeted at a specific person.
- The fact that certain conduct offends multiple genders does not automatically bar Title VII liability.

For employers in the Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands), the decision raises the bar on how far

employers must go to monitor the sounds heard by their employees at work.

The plaintiffs in the case are eight former employees – seven women and one man — of an apparel manufacturer called S&S Apparel. They all worked at a large S&S warehouse in Reno, Nevada.

They said S&S allowed managers and employees to play “sexually graphic” and “violently misogynistic” music throughout the warehouse on a routine basis.

“[T]he music overpowered operational background noise and was nearly impossible to escape,” according to the court’s ruling.

What’s the problem?

What exactly was the music that was offensive?

As examples, the plaintiffs said some songs used terms like “hos” and “bitches.” Others glorified prostitution and described extreme violence against women, they alleged.

These are not songs taken from underground mixtapes or created by little-known artists. At least some of the music at issue can fairly be characterized as mainstream – and certainly mainstream enough to garner radio play.

For example, one of the songs identified in the case – “Stan” by Eminem – was a hit in 12 countries and reached number 51 on the Billboard top 100. Eminem has performed at the Super Bowl halftime show and sold millions of albums

A ‘catalyst’ for other problems?

The music allegedly acted as a “catalyst” for abusive conduct by male workers, who allegedly made sexually graphic gestures, made sexually explicit remarks, and openly shared pornographic videos.

Both male and female employees complained almost daily, the decision says, but S&S allegedly “defended the music as motivational.”

The plaintiffs sued, asserting that the music and the related conduct created a hostile work environment and thus resulted in a violation of Title VII.

A lower court granted a defense motion for dismissal, finding that there could be no unlawful sex discrimination because the music could be heard by everyone and was offensive to both men and women.

Appeals court revives suit

On appeal, a three-judge panel of the Ninth Circuit disagreed. It said the lower court pulled the trigger on dismissal too quickly.

It sent the case back to the lower court and told it to reconsider the allegations in light of two key principles.

First, it explained, harassment can violate Title VII even if it is not directed at a specific person. And second, a Title VII claim is not necessarily barred by the fact that the challenged conduct offends more than one gender.

Individual targeting is not needed, the court explained. Instead, it said, it is enough if hostile conduct “pollutes the victim’s workplace, making it more difficult for her to do her job, to take pride in her work, and to desire to stay on in her position.”

EEOC agrees

In making its decision, the court noted the EEOC’s position that “exposing employees to misogynistic and sexually graphic music can be discrimination because of sex, even where the employer exposes both women and men to the material and even though both women and men find the material offensive.”

According to the court’s ruling, at least four other circuits (Second, Fourth, Sixth, and Eleventh) have ruled that “sights and sounds that pervade the work environment may constitute sex discrimination under Title VII.”

Sexually charged conduct can simultaneously offend different genders, the court added. That means a male employee can bring a hostile environment claim alongside female employees.

“An employer cannot find a safe haven by embracing intolerable, harassing conduct that pervades the workplace,” it said.

The lower court’s decision was reversed, and the case was remanded for further proceedings.

Key takeaway: Actively monitor music being played by employees in the workplace — and respond promptly to complaints that it is creating a hostile work environment.

Sharp v. S&S Activewear, No. 21-17138 (9th Cir. 6/7/23).

[Read this article online](#) 

Unlocking employee engagement: New study reveals what employees want most in 2023

June 29, 2023

Lensa, an online job search platform, recently analyzed Google search data to determine exactly what workers want — providing valuable insight that can help companies boost employee engagement and retention.

The researchers also examined the data to see which workplace demands are trending, defined in this study as growing the most year over year.

This insider info is especially helpful for HR pros because it tracks the employee demands that are increasing in popularity.

So what do the findings reveal — and how can you use that insight to revitalize employee engagement? Here's what you need to know.

What workers want now: 5 perks to boost employee engagement

Not surprisingly, remote work was “the top demand by far,” according to Lensa’s research. It returned almost 650,000 searches on Google in the last year.

Remote work also took the top spot in 2022, with 487,000 Google searches. The increased number of searches indicates that employees’ interest in remote work is growing, according to researchers.

During the pandemic, many employees discovered remote work has multiple benefits, such as reduced commuting time and costs and increased family time for an improved work-life balance.

The takeaway: It might be time to rethink those hardline return-to-office orders. Even corporate bigwigs like Amazon and Disney are facing unprecedented levels of pushback from employees.

Even though remote work was the clear winner in terms of searches, the data also revealed other perks that employees want right now:

- **Four-day workweeks** are the second most desired perk, with 379,700 Google searches in the last year. A four-day workweek also took the second-place spot last year, with 192,000 Google searches. Again, the increase in the number of searches demonstrates a growing interest in the benefit. Lensa notes that shortened workweeks can provide additional benefits, including increased employee morale and reduced employee burnout.

- Coming in at No. 3, **work-life balance** garnered 310,500 Google searches in the last year. Companies can go beyond encouraging work-life balance by helping employees regulate it. Doing so helps employees avoid the trap of toxic productivity. In 2022, this third-place spot was taken by employee assistance programs (EAPs).
- **Corporate social responsibility** took fourth place on the list of employee demands, racking up 243,900 searches in the last year on Google. Corporate social responsibility shows that companies self-regulate their actions to prioritize accountability. For example, some companies have implemented volunteer PTO programs that allow groups of employees to give back to the community as company representatives — on company time. Previously, sign-on bonuses took the fourth spot in 2022.
- Rounding out the top five, **professional development** returned 208,100 Google searches over the last year. How important is professional development? In a BetterBuys survey of 2,000 employees, 92% ranked professional development as “important” or “very important.” Previously, employee resource groups (ERGs) took the fifth spot on the list, with 84,300 Google searches in 2022.

A look ahead: Top 3 growing employee demands

Lensa also looked at the year-over-year increases in Google search volumes over the last year to better understand which employee demands are increasing in popularity.

Here's what to put on your radar:

1. Sustainable work practices

Sustainable workplace practices had a 200% increase in search volume from last year. Between ongoing concerns about global warming and an increasing number of severe weather events, more employees than ever are focused on sustainable business practices. And as Gen Z enters the workforce, this trend is extremely likely to continue. The youngest generation in the professional sphere has been vocal about the need for corporations and businesses to be mindful of their environmental footprints and align their company values with employees’ concerns. If you haven’t already made it a priority, now’s a good time to prioritize sustainable investing options in your 401(k).

2. Workplace transparency

Workplace transparency had a 120% increase in search volume over last year. The growing interest in workplace transparency mirrors recent legislation that has called for more pay transparency. With this insider info, employers may want to brainstorm ways to be transparent about KPIs and revenue as well as decision-making strategies regarding pay raises and benefits offerings. To maximize recruiting efforts, include salary ranges in job ads. Companies may also want to consider providing channels for employees to share concerns, feedback and ideas.

3. Menopause leave

Menopause leave rounds out the top three growing workplace demands, with a 100% increase in search volume from last year. Global menopause productivity losses total \$150 billion a year, according to a Bloomberg study. In light of the growing interest in menopause leave, employers can incorporate these low- and no-cost strategies to become a menopause-friendly workplace.

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HR leader said what!? Questionable comment at 'Leadership Town Hall' results in \$2.4M payout

June 29, 2023

As an HR professional, you know that words matter – a lot. And you're probably mindful of how you speak about employees and applicants to avoid making a questionable comment.

That's important because the wrong words can make employees feel excluded or ostracized at work.

And as this case shows, careless words from HR can be very expensive.

EEOC steps in after questionable comment

Who was involved: Lilly USA, LLC, a pharmaceutical corporation based in Indianapolis, Indiana, and an undetermined class of applicants over the age of 40.

What happened: According to the EEOC's lawsuit, the company's senior vice president for HR spoke at a "Leadership Town Hall," pointing out that the workforce was "skewed toward the older generations." The senior vice president then announced an "Early

Career" hiring goal to add more millennials to the staff.

As a result, the company "changed its hiring preferences and intentionally under-hired older candidates for sales representative positions in favor of younger candidates based on their age," the EEOC alleged.

The EEOC filed an age discrimination lawsuit, asserting that the alleged conduct violates the Age Discrimination in Employment Act (ADEA). The suit sought back wages and damages.

Result: The company agreed to deposit \$2.4 million into an interest-bearing settlement fund and provide other relief to settle the lawsuit. Under the terms of a 30-month consent decree, the company was:

- Prohibited from rejecting applicants based on age
- Ordered to update its hiring policies
- Directed to notify employees about their rights under the ADEA
- Required to provide training for managers
- Ordered to fairly reconsider interested claimant-job candidates in the same manner as any other job applicant, and
- Required to submit periodic reporting to the EEOC

Info: Settlement in *EEOC v. Lilly USA, LLC*, 6/26/23.

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Top 3 most important soft skills employees need – and how to help develop them

June 30, 2023

With a focus on learning and development (L&D), helping employees develop and grow professionally can help keep employees engaged and reduce turnover. Plus, it simply turns your people into stronger workers.

As important as technical skills are, they aren't the only piece of the puzzle. Soft skills are an invaluable part of L&D. In fact, a report by Miro found that almost all employees agreed that learning a new skill can help them "recession-proof" their jobs.

But it can be hard to know which skills to focus on – or how to help workers cultivate them. Luckily, the

report also uncovered the most important soft skills workers need for their current roles. Here's what they are – and how to help employees improve them.

1. Problem-solving

Miro's report found that 36% of knowledge workers ranked problem-solving as the top soft skill needed for their role.

Why it matters: There are many other skills wrapped up in problem-solving, like critical thinking, decision-making and creativity. An employee with strong problem-solving skills can be more innovative, creative and proactive when issues arise.

How to help employees: It's imperative to let employees figure out their own problems – when it's appropriate – to help hone problem-solving skills. A lot of problem-solving abilities come from hands-on experience, so you may want to encourage employees to tackle challenges or take risks – and then help employees work through problems with structured problem-solving methods.

2. Leadership

Thirty percent of respondents ranked leadership as the top soft skill.

Why it matters: No matter what position you're in – whether you're in the C-suite or an intern – leadership skills can be invaluable for any employee or leader. It can make you more confident, more adaptable and a better communicator.

How to help employees: Employees with the autonomy to make their own choices and work independently have a sense of ownership of their own work. Offering leadership training through continuing education or a mentorship program can also help employees develop their skills.

3. Communication

The report found that 28% of knowledge workers considered communication to be the top soft skill they needed. Communication was also ranked as a top skill for managers and teams.

Why it matters: Good communication can make or break a team. It helps ensure that everyone is on the same page and keeps employees productive and accountable. Plus, when issues do arise, it can help them get solved more quickly.

How to help employees: If an employee is struggling with communication – or you just want to give them a refresher – try one-on-one coaching to help practice communication essentials like word choice and body language.

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RELIGIOUS ACCOMMODATION DUTY EXPANDS



EMPLOYMENT LAW

Get ready: Supreme Court raises the bar on religious accommodation duty



by Tom D'Agostino

As we predicted, the U.S. Supreme Court has expanded the duty of employers to provide religious accommodation to employees under Title VII. The high Court did so via a unanimous decision that essentially redefines the concept of “undue hardship” in cases involving religious accommodation.

Beginning immediately, employers must be prepared to do more to accommodate requests for religious accommodation.

Background of the case

Gerald Groff, an Evangelical Christian and Sunday Sabbath observer, began working for the U.S. Postal Service in 2012.

Groff worked as a Rural Carrier Associate, a position that generally did not require Sunday work. That changed when the postal service entered into an agreement with Amazon to begin making Sunday deliveries. When that happened, the postal service told Groff he would need to work on Sundays.

Groff got a temporary reprieve by transferring to a station that did not make Sunday deliveries. But Amazon deliveries soon began from there as well, and Groff found himself in the same predicament.

The postal service tried to accommodate his desire to avoid Sunday work: It had other staffers make Sunday deliveries during peak season, and during other times it had other carriers do the Sunday work.

It was not easy to make things work. The postmaster had to cover some shifts and said it was difficult to find coverage and increased his workload. The postal service also said Groff's refusal created morale problems and resentment toward management among the carriers who were forced to cover for his repeated absences.

Groff was progressively disciplined for his continued refusals, and in January of 2019 he resigned.

When he sued for disparate treatment and refusal to accommodate under Title VII, a lower court ruled against him on the basis that granting the requested accommodation would produce an undue hardship for the postal service. After a federal appeals court agreed, the case reached the U.S. Supreme Court for further review.

The Court heard oral arguments in April and issued its unanimous decision on June 29.

What is 'undue hardship'?

Under Title VII, covered employers must reasonably accommodate their employees' sincerely held religious beliefs unless doing so would result in "undue hardship."

The crux of this case: What exactly does "undue hardship" mean in Title VII cases involving religious accommodation?

Then and now

Before this case was decided, courts interpreted the term to mean anything more than a "*de minimis*" cost on employers. In other words, if the burden of providing a religious accommodation was anything beyond *de minimis*, the accommodation was not required.

That standard derived from a 1977 Supreme Court ruling that included this fateful line: "To require [the employer] to bear more than a *de minimis* cost in order to give [an employee a day off to worship] is an undue hardship."

Lower courts subsequently seized on this isolated language to adopt a *de minimis* undue hardship standard for religious accommodation.

It was not a crystal-clear standard by any means — but it was crystal clear that it was a standard that favored employers by setting the accommodation bar relatively low. For example, by contrast the Americans with Disabilities Act's definition of the term requires the provision of accommodation unless doing so would result in "significant difficulty or expense."

In deciding whether a religious accommodation imposed an undue hardship under Title VII, the EEOC explained that relevant factors included "the identifiable cost in relation to the size and operating costs of the employer, and the number of individuals who will in fact need a particular accommodation."

In the *Groff* case, the Supreme Court said in essence that lower courts have been misreading the 1977 case all this time by placing too much reliance on that single sentence from it.

"[I]t is doubtful that [just that one sentence] was meant to take on that large role," the Court explained.

Instead, the Court said, the earlier ruling suggested a more stringent standard for employers, noting that it spoke in terms of "substantial" costs or expenditures. That ruling's reference to *de minimis* "was undercut by conflicting language," it explained.

In reaching this conclusion, the high Court relied in part on dictionary definitions of the words "undue" and "hardship."

The new standard

So just what does "undue hardship" mean now?

"We hold that showing 'more than a *de minimis* cost,' as that phrase is used in common parlance, does not suffice to establish 'undue hardship' under Title VII," the Court decided.

Instead, undue hardship exists when granting an accommodation "would result in substantial increased costs in relation to the conduct of [the employer's] particular business."

The decision instructs lower courts to apply the test in a "commonsense manner" and in a way "that takes

into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, 'size and operating cost of [an] employer.'"

The high Court sent the case back to a lower court for further development in light of the newly clarified applicable standard.

What it means

While the ruling does not establish a bright-line test that employers can apply when determining whether a requested religious accommodation would impose an undue hardship under Title VII, it puts to bed the idea that all they need to do to avoid providing an accommodation is to show anything more than a *de minimis* burden.

The key takeaway here is that employers must now do more to accommodate religious accommodation requests.

Precisely how much more remains to be seen. And although the decision explicitly rejected the suggestion that the question be answered by reference to an existing body of ADA caselaw that addresses it under that law, ADA caselaw is nonetheless instructive to employers trying to determine precisely where the new boundary lies.

The decision is *Groff v. DeJoy*, No. 22-174 (U.S. 6/29/23).

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What's wrong with employee engagement now — and 5 ways to fix it



by Michele McGovern

5 THINGS WRONG WITH EMPLOYEE ENGAGEMENT



What's wrong with employee engagement?

Lots, according to research.

But we probably don't have to tell you that. HR pros see it in the workplace: It's the struggle to retain talent. It's the resistance to change. It's the lack of interest in initiatives. It's the pushback on returning to the office. It's the general feeling of disinterest and unrest.

"Now more than ever, employers are struggling to keep up with the evolving needs of talent, and risk falling behind if they don't bridge the

growing divide related to workplace expectations," says Tammy Browning, SVP at Kelly.

To back up what you likely experience, The 2023 Kelly Global Re:work Report found:

- 45% of employees have been or are Quiet Quitting
- 28% of employees say they plan to leave their job in the next year
- 43% say they've experienced non-inclusive behaviors at work, and
- 37% say they work in a psychologically unsafe environment.

But it's not just employees complaining. Leaders in the survey admit they see issues.

- 23% of company leaders say employee satisfaction has dropped in the past year
- 24% of leaders say employee well-being has dipped, and
- 47% of leaders say their Diversity, Equity and Inclusion (DEI) strategy only pays lip service to underrepresented groups.

"As organizations enter a post-pandemic era, those that prioritize building a resilient workforce by focusing on the three pillars

{workforce agility, DEI and workforce capability} will be better equipped to adapt to the future of work and thrive in changing market conditions,” says Browning.

Let's change what's wrong with employee engagement

Employees are disenchanted. Leaders even wonder if there will ever be an employee engagement evangelization.

“Our research shows that U.S. employees are in the midst of a connection crisis at work and currently, only 36% of employees reported feeling engaged at work,” says Dr. Jacinta Jiménez, PsyD, Vice President of Coaching Innovation at BetterUp, and author of *The Burnout Fix*. “When we don't have relationships at work, we're more likely to feel burned out, stressed out, and — you guessed it — disengaged.”

So let's look at the biggest threats to employee engagement right now — and expert advice on how to keep each one at bay or resolve it before it hurts the workplace.

Issue 1: DEI plans are failing

It's a sobering truth: DEI initiatives have plateaued, or even dropped off in some cases, the Kelly survey found. For instance, just 20% of senior managers hosted open conversations on DEI last year, compared to the 30% that did it in the previous year.

Leaders and employees are showing signs of DEI fatigue.

Bring it back: It's time to pump resources and time back into DEI initiatives, especially diversity retention after hiring, as that has been declining. You might help employees *with* similar experiences connect, giving them the ability to start and support Employee Resource Groups (ERGs) around their similarities. Then let them talk with and share their experiences with people who *don't* have the same background.

Issue 2: Agility is limited

Many employees feel their ability to change direction quickly is limited within their organizations. They can't make decisions about their work and careers without jumping through hoops or waiting for approval. And that makes them feel constrained by their jobs.

Bring it back: Regardless of where employees work — remote, hybrid or on-site — organize quarterly reviews of work flow and progress. Ask employees to keep an eye out for bottlenecks and road bumps that prevented them from completing tasks as quickly as they anticipated. These reviews help eliminate issues that prevent agility across teams and in individual performance.

Issue 3: Flexibility doesn't feel flexible

Companies created flexible work arrangements for employees out of necessity when the pandemic hit. And now they're reeling back — for a variety of reasons — to the discontent of some.

About 80% of all companies have some degree of flexibility, but just 44% of those companies have formal policies around flexible work arrangements, according to an XpertHR study.

“This finding may reflect some uncertainty around the future of flexibility in the workplace,” says Victoria Kelleher, Lead Survey Specialist at XpertHR. “Although flexible work has become far more common, employers seem reluctant to guarantee the options they currently offer to employees indefinitely.”

That has led to some disengagement. Employees almost always prefer clarity and predictability.

Bring it back: If you don't have it by now, and you intend to maintain hybrid and remote work, create a policy that governs the work. Address logistics, work quality and quantity expectations, collaboration expectations, etiquette, and beyond.

Issue 4: Stability is wavering

Employees have lots of reasons to worry about their jobs — layoffs, the rise of Artificial Intelligence (AI) and its potential to eliminate jobs, a weakening economy, etc. They fear the loss of work and the benefits they and their families often rely on.

So they might be over-stressed (quite possibly, unnecessarily) and under-engaged.

“As HR leaders, it is our responsibility to tend to the needs of all employees during times of change,” says Trevor Bogan, Regional Director of the

Americas at Top Employers Institute. “By creating a workplace culture that values employee mental health and well-being, we can help ensure that our team stays positive, resilient and supported throughout these challenging times.”

Bring it back: It comes back to transparency. In good and, more importantly in bad, times you want to be honest, clear and direct with employees. That way, they can plan what's next, whether that's digging in and becoming more engaged with their organization or looking elsewhere.

In a psychologically safe workplace, you'll see:

- enhanced employee engagement
- increased creativity and new ideas
- increased in productivity and performance
- improved employee well-being, and
- reduced employee turnover.

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Issue 5: Safety is fleeting

People don't feel as safe as they once did nearly everywhere they go. And while the workplace might have limited physical safety issues, employees don't always feel psychologically safe there. And that hurts engagement.

“Psychological safety is the shared feeling that you can share your thoughts, opinions, and ideas without fear of being degraded or shamed,” says Jiménez. “An effective team values psychological safety as much as physical safety and performance standards.”

Bring it back: Jiménez suggest you take a closer look at your employee experience — perhaps with surveys or focus groups. Then find opportunities to naturally add time to make connections and reinforce psychological safety behaviors such as listening, sharing and reassuring.

Case Study

How a hashtag turned into a culture shift toward employee wellness



Reminding employees about available wellness resources wasn't enough. We knew we had to step it up.

When the pandemic hit and everyone began working from home – and not knowing for how long – we knew we had to adapt our approach to employee wellness.

But, despite a wealth of resources for our people, employees weren't just going out and using the resources available to them. Many didn't want to be the one to use resources like our employee assistance program due to the attached stigma.

We knew we needed to take a more hands-on approach to wellness.

Letting our people know it's OK to not be OK

To start a larger conversation around wellness and mental health, we started an “#ADPitsOK” hashtag to help provide a safe space for employees in an unfamiliar remote work environment.

We encouraged our people to acknowledge moments when they weren't feeling OK – perhaps struggling with burnout or feelings of isolation – and ensured that folks knew we were there to support them. In a time of separation, it helped team members come together and connect with each other.

To keep the conversation going and continue providing adequate mental health resources, we also declared May as our “Month of Wellness.” It included a keynote wellness advocate guest speaker and focused on creating opportunities for employees to carve out time for their own wellness.

Jumpstarting a culture change

The Month of Wellness was a hit, but we knew our people needed mental health support year-round, not just once a year. So we prioritized threading employee wellness into our company culture.


Our wellness culture encourages employees to seize small opportunities to practice wellness throughout the day, such as taking two-minute stretch breaks during the workday or taking a walk while on a business call to get some fresh air.

Taking it further

The culture of wellness we created didn't just involve our people – it also included our client partners. We knew that our partners wanted to make a commitment to employee wellness as the COVID-19 pandemic continued to be disruptive.

As a result, talking about the various employee wellness resources that are out there became a part of everyday client conversations.

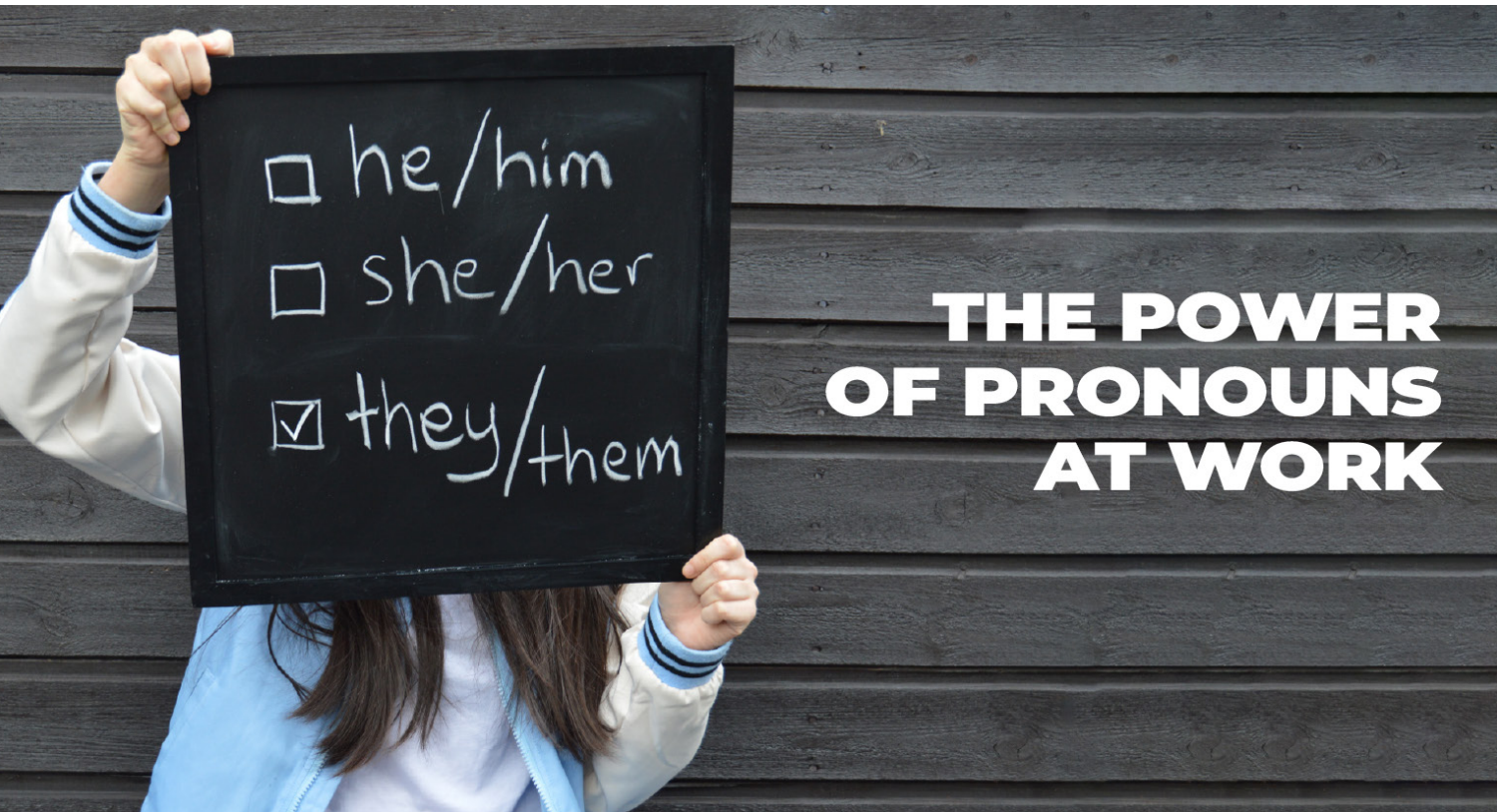
(Amy Freshman, senior HR leader, ADP, Natick, MA)

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Pronouns at work: HR's guide to getting it right – and what to do when you get it wrong



by Alison Roller



Making all employees feel welcome should be a top priority for HR. Studies show that those who feel a sense of belonging at work can be more engaged, productive and simply do better work.

One easy way to become more inclusive is to promote the use of inclusive pronouns and emphasize their importance. But it's not as simple as putting your preferred pronouns in your email signature and calling it a day.

Impactful initiatives need to go far beyond the surface. Your people not only need to understand how to use pronouns correctly, but why it's important to do so.

Luckily, we've got your essential pronoun guide to support LGBTQIA+ employees and help educate others to create a true culture of inclusion.

Pronouns: The basics

First things first: **What exactly are gender pronouns?**

Simply put, they're "words that a person uses to describe themselves or would like others to describe them," according to the Employers Network for Equality and Inclusion. Those in the LGBTQIA+ community may change their pronouns to reflect their gender identity, especially those in the non-binary and trans communities.

And using different pronouns is becoming more common, with one in four Americans reporting that they know someone who uses gender-neutral pronouns.

Using inclusive language in the workplace

Respecting pronouns at work and using inclusive language can lead to happier, more engaged workers.

Even if you don't have an employee who has disclosed their gender identity or pronouns, that doesn't mean that the practice of inclusive language and allyship should be put on the backburner.

Some may hesitate to share their pronouns or gender identity due to fear of discrimination; in fact, resumes including "they/them" pronouns are more likely to be overlooked, according to a recent report from Business.com, so it's important to practice using inclusive language all the time, not just around those who are LGBTQIA+.

For example:

- Use "team" or "folks" when addressing a group of people instead of "ladies and gentlemen" or other gendered language
- Swap "maternity leave" or "paternity leave" with "parental leave"
- Replace honorifics like Ms., Mrs. or Mr. with the gender-neutral "Mx.", and
- Say "partner" or "spouse" instead of gendered language like husband or wife.

5 best practices for inclusivity

It's important to cultivate a culture of inclusivity and allyship to ensure that no one has to think twice

about using inclusive language and respecting pronouns – it's just part of the company culture.

"Your actions must go beyond the 'checklist' approach and only doing the minimum and what is easy," says Angie Freeman, DEI speaker and program manager for events and partnerships at the University of Michigan.

Here are some best practices to practice what you preach when it comes to inclusivity.

Address your biases. Before you can get everyone else on board, you need to self-reflect. "If you truly want to be transformative, you have to do something about your own feelings, your internalized homophobia and everything else," says Kat Kibben, CEO and founder of Three Ears Media. "And then figure out the plan from a very human place of, 'If this were my child, how would I want them to be treated?'"

Don't be a bystander. Stand up and speak up for LGBTQIA+ colleagues, even if they're not in the room. "Bystander intervention is effective when the person being harmed is present, and arguably, even more effective when the person being harmed is not present," says

Freeman. "It shows a certain level of commitment and standardization for our inclusion efforts and values."

Gender Pronouns				
Subjective	Objective	Possessive	Reflexive	Example
She	Her	Hers	Herself	She is in the office. I bought her a coffee. The project is hers , she had the idea herself .
He	Him	His	Himself	He is in the office. I bought him a coffee. The project is his , he had the idea himself .
They	Them	Theirs	Themselves	They are in the office. I bought them a coffee. The project is theirs , They had the idea themselves .
Ze	Hir/Zir	Hirs/Zirs	Hirself/Zirself	Ze is in the office. I bought zir a coffee. The project is zirs , ze had the idea zirself .

*Please note that these are not the only pronouns. There are an infinite number of pronouns as new ones emerge in our language. Always ask someone for their pronouns.

HR MORNING

Here's a real-life example from Freeman: "During a virtual meeting with several colleagues, I was misgendered by a supervisor and my supportive colleague spoke up immediately and said, 'Just to remind you, Angie uses they/them pronouns.' I was taken aback and pleasantly surprised by the immediacy of the correction and seriousness that my supportive colleague had taken. This is what solidarity looks and feels like – harmful to all and beneficial to all."

Communicate openly. If an employee misgenders a colleague, use the opportunity to start an open conversation and get to the root of the problem. However, Kibben suggests keeping the conversation curious and open-minded, not accusatory. Consider asking something like, "What did

you mean by that? They've told you their pronouns, and you're using this pronoun. Why?" to start a dialogue.

Prioritize continuous learning.

Education shouldn't be one-and-done – and shouldn't be prioritized exclusively during Pride Month. "[One-and-done pronoun education] is entertainment. It's not education. It's education for that group. And then 50% of your staff turns over, and it doesn't matter anymore," says Kibben. Instead, consider annual training or multiple learning opportunities.

Train hiring managers. An inclusive recruiting experience, such as a hiring manager who shares their pronouns at the start of the conversation, can start new LGBTQIA+ hires off on the right foot and reduces the fear associated with disclosing their gender identity or pronouns. "We need to retrain on how we introduce ourselves to others up to and including your external vendors so that we start from a place of showing instead of telling people that you're inclusive," says Kibben.

What to do if it goes south

With inclusivity measures, things may not always go the way you planned — and that can be a good thing.

"...[Mistakes are] where growth happens and where social justice extends beyond the simple thought of everyone valuing each other's identities," says Freeman. "This is not easy; most people intend well and want to seem woke, but are not

willing to put in the work, specifically the self-work."

Here are three steps to take when things don't go the way you planned:

- Learn from those who know it best: Chances are, the mistake being made is not malicious; it's simply a lack of education. And there's no better education than seeking out real-life experiences and stories. "[The best way to educate yourself] is not some formal training. It's to be in society and in life with people who are living as who they are," says Kibben.
- Don't overcompensate with apologies: It can be tempting to apologize profusely when you misgender someone or make a similar mistake, but that isn't always the best solution. "When you say you're sorry, what you're really saying is feel bad for me when you just made someone else feel bad," says Kibben. "I know you're sorry, but just do it differently. And [...] keep moving."
- Commit to doing better — and then actually do it: "Apologies are great, but actions are where we're trying to get to," says Kibben. If you commit to doing better, it's important to be proactive and take the steps to get there.

"One pitfall to avoid is defending your choice of words after someone has provided you with feedback on considering using other words instead," says Freeman. "It's about respecting the person in front of you and those around you regardless of if you agree or disagree."

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The Cost of NonCompliance



\$145K

Employer brings in priest to hear 'confessions' of workers who cooperated with DOL: \$145K payout


Who was involved: Che Garibaldi Inc., operator of two Taqueria Garibaldi restaurants, and 35 employees in northern California.

What happened: According to an investigation by the DOL's Wage and Hour Division, the company denied employees overtime pay for hours over 40 in a workweek in violation of the FLSA. The investigation also found the employer paid managers from the employee tip pool, threatened employees with retaliation and adverse immigration consequences for cooperating with the investigation, and fired one employee who they believed had complained to the DOL. When the case reached a California federal court, an employee testified that the company brought in a priest to hear confessions during work hours. The priest allegedly urged workers to "get the sins out." The employee told the court that the priest asked employees if they had:

- Stolen from the employer
- Done anything to harm their employer, and
- Bad intentions toward the employer.

Result: The court ordered the company to pay \$140,000 in damages and back wages to 35 employees. It also tacked on \$5,000 in civil penalties for the willful nature of the violations. In addition, the court ordered the company not to take any action to:

- Prevent workers from asserting their rights
- Interfere with any department investigation, or
- Terminate, threaten or discriminate against any employee perceived to have spoken with investigators.

Info: [Employee Testifies Restaurants Offered Priest to Extract Confessions of Workplace 'Sins' – Court Orders Payment of \\$140K to 35 Workers](#) , 6/12/23.

[Read more The Cost Of Noncompliance in your Membership Dashboard](#) 

3 reasons good managers make bad decisions – and how to avoid them



by Michele McGovern



PRACTICAL TIPS TO AVOID BAD DECISIONS

Even intelligent, well-informed managers sometimes make bad decisions.

Armed with the best information and intentions, we still get tripped up by our own biases and assumptions.

“People need to recognize that we are biased in every single situation,” says Sydney Finkelstein, one of the authors of *Why Good Leaders Make Bad Decisions and How to Keep it From Happening to You*. “There’s no such thing as objectivity.”

Factors when we make bad decisions

Most managers say they spend almost a third of their time at work

making decisions, a McKinsey study found. The higher up the chain of command, the more time spent deciding stuff.

With that much time spent making decisions, managers want to feel more certain they make good decisions.

Finkelstein and fellow researchers, Andrew Campbell and Jo Whitehead, found several factors that get in the way of making consistently good decisions.

What these factors have in common is that they seem to be helpful at first — until they quietly and quickly lead good decision-makers astray.

Here are the top three reasons good managers sometimes make bad decisions:

1. Pattern Recognition

Even when facing new situations, managers make assumptions based on past experiences and judgments.

Relying heavily on what they know isn’t exactly a bad thing – after all, most managers have come up through the ranks and have a wealth of knowledge.

The problem comes when they make assumptions because they think they’ve seen it all before.

For instance, Dick Fuld, the former and final CEO of Lehman Brothers successfully got the company through a global financial crisis in the 1990s. Ten years later, Fuld tried to handle a similar situation in the

same way, relying on what he knew about the first crisis.

Problem was, the first crisis was fueled by the housing collapse. The second was more complex. So his plan failed.

To avoid pattern recognition, researchers suggest you seek out fresh experience and analysis, especially a different take on the problem from trusted colleagues or employees. Talk to those who weren't around the last time the seemingly same thing happened.

2. Emotional tagging

We attach emotions to every experience stored in our memories. Managers don't just see the goal they've crushed; they feel the excitement. They don't just see the bad decision; they feel the disappointment in the outcome.

Feeling those emotions impacts current decision-making, researchers found, because time is spent reviewing those feelings when it would be best spent on more objective things – say, just the facts.

For instance, you've probably never heard of a Wang PC. Bad decisions based on emotions is why. Wang Laboratories launched a PC with its own operating system when IBM's PC was the emerging standard. Founder Dr. An Wang had worked at IBM years before and felt cheated by a decision that affected him negatively. He was reluctant to consider using anything linked to IBM and his system never took off.

To avoid emotional tagging, researchers suggest you push others to challenge you. Present your challenges to colleagues who don't have an interest in the outcome to help you separate emotions from reality.

3. Ignoring red flags

The brain doesn't naturally follow the textbook model of making hard decisions: lay out options, define objectives, assess options and make an objective decision.

Instead, people sometimes ignore red flags (because of patterns or emotions) and make compulsive decisions.

For instance, William Smithburg, former Quaker Oats Chairman, acquired Snapple quickly because he had good memories of a profitable deal with Gatorade. His impulsiveness led to a huge loss.

To identify red flags, tune into your own biases. What seems particularly attractive or unattractive about the option you're considering? If it seems too perfect or imperfect, that's a red flag. If you're attached to decision because of people, places or things, it can be a red flag. So, get a second opinion before going with your gut.

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Meet Our Editors

Our editors read and vet hundreds of sources and hand-select the most relevant, practical content. Then we add our seasoned perspective and deliver actionable insights to help you understand what today's trends mean for your business.



Tom D'Agostino

Tom D'Agostino is an attorney and legal editor who has more than 30 years of experience writing about employment law, disability law and education law trends. He earned his B.A. degree from Ramapo College of New Jersey and his J.D. from the Duquesne University School of Law. D'Agostino, who is a member of the Pennsylvania bar, is a past member of the American Bar Association's Section of Individual Rights and Responsibilities and the Pennsylvania Bar Association's Legal Services to Persons with Disabilities Committee. He has provided technical assistance in the production of segments for television's ABC World News and 20/20, and he has been quoted in periodicals including USA Today. He is also a past contributing author of *Legal Rights of Persons with Disabilities: An Analysis of Federal Law*, which is a comprehensive two-volume treatise addressing the legal rights of people with disabilities. Tom is passionate about baseball and authentic Italian food. When not writing, he enjoys spending time with family.



Michele McGovern

Michele McGovern writes. A lot. These days, she covers HR, digging deep into company culture, DEI, leadership, management and the everchanging world of work. In the years between getting a BA in journalism from a state school and writing about HR, she wrote about big-city crime for a wire service and small-town life for local newspapers. She's a mediocre mom, decent wife, wannabe athlete and consummate pursuer of fun - on land, snow and water. Follow her on Twitter @sheknowswork. Find her on LinkedIn @michele-mcgovern-writer



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Brian Bingaman

Brian Bingaman has been a journalist in the Philadelphia area for nearly 20 years. He was a contributing editor for *ResourcefulFinancePro.com*, as well as the publications *What's Working in Human Resources* and *What's New in Benefits and Compensation*. He first became interested in HR when he started noticing a distinct lack of human interaction from the HR department of the newspaper group where he worked. In addition, Brian has 15 years of experience in the radio broadcasting industry.



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