

[LIBN Who's Who? Intellectual Property & Labor Law 2.1.19](#)

There are two growing areas of apparent need for our clients in 2019, Tabibi said. “First is data privacy. Because of the new General Data Protection Regulation, many of our clients turned to us to address GDPR and their internal privacy practices. With further privacy legislation anticipated, the privacy challenges are growing and will impact virtually every client.”

“Second are agreements involving software, the cloud and apps to power and improve our clients’ businesses as clients recognize the value and necessity of a digital business model. As a result of technology’s rapidly growing impact on business, it is important for companies to work with technology and legal professionals to ensure their new technology fits their business model and that their business operations and proprietary information are protected.”

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Waters believes there are two issues that will be “hot topics” in 2019. One is the United States Department of Labor’s (“USDOL”) “80/20” rule and the other is a potential increase to the salary basis test.

[Social Media Advertising and New York Privacy Laws](#)

What Businesses and Advertisers Should Know Before Advertising on Social Media Websites

The social media rise through websites including Facebook and Twitter and the increased use of electronic communication has dramatically shifted advertising to the Internet. Google and Facebook are among those websites with lucrative and growing advertising revenues. Facebook’s online advertising business, in particular, is rapidly growing, taking in an estimated \$1.86 billion in worldwide advertising revenue in 2010, with estimates of revenues more than tripling to \$5.74 billion by 2012.

Companies both large and small advertise on Facebook and use many creative means to market their products to Facebook’s over 750 million active users. Many methods exist to advertise a product on

Facebook, most of which are quick and inexpensive, making Facebook advertising appealing and especially attractive to newer businesses. At the same time, the ease and inexpensiveness with which companies may now promote products means companies may neglect safeguards against any illegal or infringing conduct, especially with younger, less well-funded companies with fewer resources.

[LIBN Cover Story: Is Your Workplace Toxic?](#)

Click on the PDF icon above for the original LIBN July 2018 cover story featuring Gerald C. Waters. See the text below:

By Adina Genn

Emails sent out by a higher-up at all hours of the night, demanding answers. Employees undermined at office meetings.

Profanity-peppered texts, replete with ultimatums.

These are just some of the telltale symptoms of a toxic workplace, where favoritism, gossip, unrealistic deadlines and poor communication thrive and threaten a business.

If the symptoms sound familiar, your organization may have some work to do in order to turn your culture around. Otherwise, experts say, when negativity permeates, an organization risks cutting into productivity and its bottom line. Employees may look for new jobs, and if word gets out, recruitment can become a challenge, not to mention expensive.

Left unchecked, "it can escalate to physical violence," said Gerald Waters, of counsel at the labor and employment practice group at Meltzer, Lippe, Goldstein & Breitstone, a law firm in Mineola. Besides injuries, the outcome can put organizations at "financial risk of litigation" even if what's transpiring at work ultimately stems from two people not liking each other and "has nothing to do with protective status."

It's best to eradicate toxicity at the root. And that work starts at the top.

"Companies can at the highest level set the tone for what's appropriate," said Tara Daub, a litigation attorney in Nixon Peabody's labor and employment group in Jericho.

"When higher level managers act professional and treat others with respect, that's going to filter down to mid-level managers and rank and file employees," she added.

Toxic workers can cost an employer as much as \$12,500 in terms of turnover costs, and that figure doesn't even take into consideration any subsequent costs surrounding lawsuits, penalties or decreased

employee morale, according to Harvard Business School.

Organizations may want to lean on their human resource experts when remedying a culture or cultivating the right kind of culture by incorporating best hiring practices establishing a code of conduct and proper policies. And employees, too, can integrate strategies so that they can cope at the office.

Leadership skills

There are a host of reasons why an office can turn toxic. At some companies, the right people might not be in positions to lead. Maybe they're not equipped to manage.

"Some are not good at communication," said Kevin Morse, a human resources specialist with Alcott HR, a human resources outsourcing firm and a certified professional employer organization, with offices in Farmingdale.

Others "are not good listeners or play favorites," Morse added.

These kinds of actions, he said, can lead to a lack of trust between employee and manager.

But this is where HR expertise can help.

"Training for managers is often very useful," Daub said. "Sometimes managers can really benefit from learning from a good trainer the positive ways to encourage employees to do better as opposed to a negative approach."

"Leaders have to be consistent," Morse noted. Organizations should "remove the roadblocks so people do their jobs effectively."

And the right people should be in place. For example, Morse said, an accounting manager who is not good at accounting may not command the respect of other accountants, who won't take that person seriously.

Codes of conduct and policies in employee handbooks can go a long way. Organizations can implement policies that promote treating employees properly and specify that hurtful behavior is subject to discipline. In addition, Waters said, preventative policies, along with training "allows people to be knowledgeable about what they should be doing and where they can go if there are problems."

The gossip, the rumors

Gossip and rumor mills can detract from the workplace, experts said.

When there are cliques and drama, employees can become "unproductive," with workers determining who's in favor and who's not. "It becomes ugly," Morse said.

Organizations can tone down the gossip by creating a constructive culture.

People respond to the boss walking around the office with smiles, congratulating a worker "who knocked it out of the park" and encouraging that person to "keep up the good work," Waters said. And despite debate as to whether society should give out awards for participation, "most people would not object" to that kind of positivity at work, Waters said.

And that can shift the emphasis back to work, experts said.

"Allowing employees to focus on their work so that they are not being distracted with a lot of personal drama in the workplace is something employees value," Daub said.

Survival skills for co-workers

Employees who find themselves in a toxic workplace can implement strategies to get through the rough spots. Look for like-minded co-workers who can empathize and brainstorm for solutions, Morse said.

And, he added, make a list of things you'd like to accomplish that day. "It's important to feel productive and know you're not contributing" to a negative environment, Morse added.

Have an outlet after work - whether its dog walking, exercise or some other outside activity to help shed the negativity, Morse said.

Try to pick up a new skillset, even if it's from a person who contributes to a damaging culture. Morse recalled working with a negative person who "liked to teach things" and found that he "got something positive out of the environment," an experience that helped turned the relationship around and make him more valuable in the workplace.

Be ready to make the next move - to another department or even organization - and keep in mind that any new skillsets makes you more employable, Morse said.

New hires

With the right people and policies in place, an organization should have the makings for a positive work environment. And this can start with the hiring process. So be sure to ask the kinds of questions that get at the heart of building a strong culture.

Morse recommends asking about a candidate's previous work culture, and if that person believes past employers lived up to their core values.

"If the person drones on about what was bad, you're probably talking to someone who views things negatively naturally and you don't want them to be a part of the team," he said.

Ask if the person prefers working independently or collaboratively, Morse said, to gain further insight as to how that person might fit in your organization.

And when hiring, don't look for someone that "checks all the boxes." Waters points out that skillsets might be easy to find on paper. But in a face-to-face interview, it might be evident "that something might not click." Maybe the person is late for the meeting - or doesn't show interest during the conversation. Here's where outside perspective can help. Ask others in the organization to meet the person, and get their take.

Ultimately, Waters said, keep in mind that "you want teammates that are going to add to the environment, not take from it."

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[Bloomberg BNA: Latest Labor and Employment Cases for June 5, 2018 - "Wage Payment"](#)

Superintendents and other property caretakers for a New York apartment rental company can't add a claim for the company's supposed failure to pay their agreed wage rate to their lawsuit for unpaid overtime and minimum wages. (Contrera vs. Langer)

For more information, click on the link below:

<https://www.bna.com/latest-labor-employment-n73014476264/>

[LIBN: If employee complains of harassment - What next?](#)

When an employee comes forward with a sexual harassment complaint, it's important for companies to take immediate action, attorneys and HR pros say. "It's incumbent on the company to conduct a swift, decisive investigation," said Larry Martinez, partner and co-chair of the labor and employment practice group at Meltzer Lippe in Mineola. Most companies have anti-harassment policies, but many are not adept at responding appropriately to a complaint.

[LIBN: Harassment April 2018](#)

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[Trusts & Estates: Educating Clients Before It's Too Late](#)

Avi Z. Kestenbaum shares his thoughts on accomplishing a complex mission.

[Trusts & Estates: Beware of Hidden Dangers When Taking On New Clients](#)

Avi Z. Kestenbaum and Jason J. Smith address practical and ethical considerations.

[Jeffrey A. Galant and Dana L. Mark on CRI-Leslie - Musings on Plain Meaning, Absurdity and Capital Gain](#)

“The importance of capital gain treatment may have lessened under the new tax law (PL 115-97)ⁱ due to the reduction in the corporate tax rate to 21% and the 20% pass through deduction.ⁱⁱ However, capital gain treatment is certainly still meaningful. That being said, a recent noteworthy case is CRI-Leslie, LLC v Commissioner. CRI-Leslie found against capital gain treatment in a matter of first impression. However, the decision’s greater importance may be its illustration of the methodology used by the courts to interpret the relevant Code provisions. Or, more to the point, whether the courts were justified in relying on the plain meaning rule rather than the legislative history in determining what the Code provisions mean.”

