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After #MeToo, employees need to ask #IsItOK?

How a new approach to harassment prevention training programs can address workplace issues.

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Starting last fall, #MeToo and #TimesUp launched a global conversation about sexual harassment and abusive conduct in the workplace. This movement has gone beyond legal concepts to examine the historical and cultural underpinnings of inequality in the modern workplace. Reactions to the tsunami of attention, among employers and employees, have varied. Some employers have plunged their heads deep into the sand, where they plan to remain until this all goes away. Spoiler alert: Even if the intensity diminishes, this issue is not going away. Other employers, just as reflexively, have dusted off the same old training programs they've used for years and made them mandatory for all employees, which they hope will help protect them from negative consequences — both internal and external. The latter impulse is a good one, but it's not enough.

California law has required sexual harassment prevention training for supervisors for more than a decade, yet some of the biggest recent scandals — and the largest single-plaintiff harassment verdict in history — have come out of the Golden State. Just as important, there seems to be a link between the prevailing, fear-based modes of training and a reactive impulse that leads employees to avoid mentoring, bonding, or even interacting with those outside their own demographic group. As the Equal Employment Opportunity Commission noted in a 2016 report, the training we have been doing is not working.

We need to ask ourselves why? #MeToo, #TimesUp, and the conversations they have begun provide some answers and, even better, point to ways that we can improve.

So, #IsItOK?

It might sound counterintuitive, but many harassment prevention training programs fail because they attempt to provide answers instead of encouraging questions. Hard, fast, and unrealistic rules abound — “Don't talk about your personal life in the workplace,” or “Side hugs are okay, but not front hugs,” or “It's better to err on the side of not telling your co-workers they look nice.” While the desire to provide bright-line rules is understandable, it is misguided.

Workplaces are not sterile environments. As long as there are employees, there will be human dramas, interpersonal struggles, close friendships, romances, breakups, and misunderstandings at work. Most attempts at hard and fast rules fail because they do not take the human element into account, and because they cannot anticipate every possible variety of human interaction. Such rules also assume a uniformity among individuals, workplace cultures, and subcultures that simply does not exist. And while it is helpful for employees to understand the difference between what is illegal and what is merely a bad idea, training programs need to emphasize that “bad idea” behavior, even if not illegal, can have a profound impact on morale, turnover, organizational reputation, and the incidence of lawsuits.

As an alternative, #IsItOk? represents a mindset in which co-workers don't assume they know how their actions will be received — they ask before acting. And they listen with open minds to the answers. This approach not only allows for individuals to become educated about the potential impacts of their conduct, it also shows respect for the opinions and reactions of others. It allows everyone to participate in the task of determining what is acceptable in the workplace. And it creates a more thoughtful environment where everyone can be heard. At least in the short run, encouraging the development of an #IsItOk? mindset will be challenging. Some employees will be

reluctant to engage, and others will have to learn how to ask rather than presume that they know how their comments and actions will be perceived.

Leadership, good facilitators, and patience are important. Training programs that incorporate #IsItOK? can help explain and inspire this mindset by tackling #IsItOK? issues that are often subconscious or otherwise fall under the radar, such as micro-aggressions, micro-inequities, and implicit bias, which traditional programs have generally shied away from. Encouraging thought-provoking discussion of hypotheticals about a supervisor asking a female employee if she is “sure you are ready” to return to work after maternity leave or a colleague asking an Asian-American coworker where she is “really” from can provide employees with a safe space and a vocabulary to start addressing these difficult issues.

Encourage compassion and civility

Tough discussions require rules of engagement. The most important such rules in this context are compassion and civility. Compassion, at least in concept, is an easy sell — employees generally understand the importance of sympathetic openness to others’ experiences. Civility, however, can be more challenging, particularly in workplace environments that pride themselves on aggressive, risk-taking, disruptive behavior in the marketplace. Defense attorneys (including me) are fond of quoting Justice Scalia’s disclaimer in *Oncale v. Sundowner Offshore Services* that the anti-discrimination statutes do not create “a general civility code for the American workplace.” While employers can continue to count their blessings that general rudeness is not illegal, that distinction is less helpful in the context of harassment prevention training programs.

Outside the courtroom, incivility is a breeding ground for harassment and discrimination. As EEOC Commissioner Chai Feldblum stated in an October 4, 2017 press release that announced new training programs on respectful workplaces, “We know that workplace incivility often acts as a 'gateway drug' to workplace harassment.” Here again, training programs would do well to go beyond the narrow categories of letter-of-the-law compliance and risk-avoidance and strive to create a workplace environment that encourages candid and civil discourse.

Don’t stop there

For the same reasons that training cannot effectively address harassment and discrimination with simplistic rules, training should not be the only step that employers take to address the factors that brought #MeToo and #TimesUp into being. Additional measures to improve inclusiveness and communication within the workplace will depend on each organization’s culture and values. Next steps can include a 360-degree assessment of culture and values, a hard look at negative behaviors, in-depth examinations of micro-aggressions and communication styles, the creation of affinity groups, periodic all-employee check-ins — or anything else that emerges from engaged and candid discussions.

When employers encourage employees to have uncomfortable or even difficult conversations — when they embrace #IsItOK? — they are taking a risk, but employers are also setting the stage for improved communications overall. Striving for an #IsItOK? approach opens the door to a more inclusive workplace, where diverse experiences and viewpoints can contribute to an atmosphere where employees and ideas can thrive. There are no perfect solutions to the problem of workplace harassment and other types of mistreatment. But by encouraging compassion, civility, and candid conversation, employers can give employees the tools to avoid missteps and handle misunderstandings, the power to address bad behaviors, and the ability to co-create a more welcoming and inclusive workplace environment.

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