



The Employee Free Choice Act and the Importance of Strengthening Employee Relations

Survey Results

By Stephen M. Paskoff, Esq., President, Employment Learning Innovations, Inc.

Introduction

ELI® recently conducted a survey of human resources and legal representatives from organizations across an array of industries to determine what behavioral issues and trends affect today's workplaces. We asked participants to respond to a series of questions identifying both successes and needs in their workplace culture. For example, survey participants identified which issues their organizations experienced more: issues that are illegal or issues that are legal but unprofessional and problematic. They also analyzed employees' comfort levels about bringing forward their concerns to managers and identified what factors influence employees' confidence in management. Finally, participants provided information about their organizations' values and how well management communicates those values.

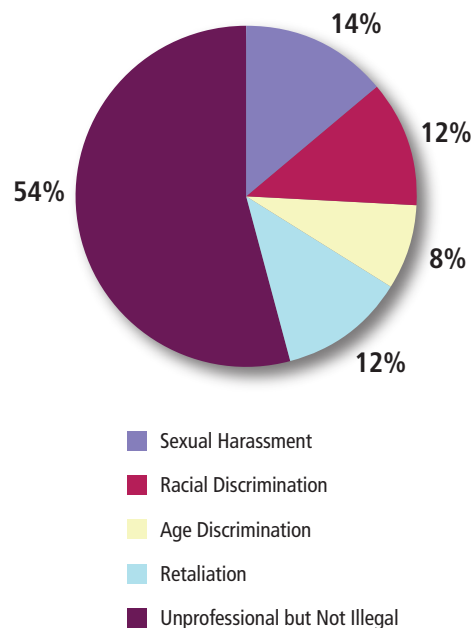
The survey results provide insight into the following areas:

- Which employment issues organizations currently face
- What role training, communication, and internal systems play in addressing employee concerns
- How the identified employment issues impact organizations
- What steps organizations are taking to incorporate values into the workplace culture
- How organizations are measuring the effectiveness of training programs

The Gray Matters

Respondents to ELI's Values and Culture Survey indicated that the most prevalent employment issues facing the workplace today are those behaviors which are not necessarily illegal, but which are clearly unprofessional and detrimental to building a professional, civil organizational culture. In fact, while 77% of respondents indicated that levels of illegal behaviors have either declined or remained the same in the past five years, 54% reported that the most troubling issues facing their organizations are those resulting from legal yet unethical behavior, such as bullying, ostracism, and stifled or ignored complaints. One respondent described these behaviors as those which lie "between policy violations and unethical actions." In other words, the gray matters.

Which of the following issues is your organization currently experiencing?



The Gray Matters *(continued)*

Even if a company handbook does not pinpoint and describe a behavior or does not warn against a behavior in black and white, this does not mean the behavior cannot undermine, or even destroy, employee relationships. Even if a company handbook does not pinpoint and describe a behavior or does not warn against a behavior in black and white, this does not mean the behavior cannot undermine, or even destroy, employee relationships. One survey participant stated the problem quite well in this sobering quote: "Leaders don't realize their reputations have been permanently damaged and people have difficulty trusting them." How can a company handbook cover every type of unethical action that can compromise a leader's reputation? Or how does a Human Resources representative go about describing every managerial response that undermines employee trust? These are the gray areas, and they really matter.

2009: A Year for Change

While the results of the ELI® survey raise concerns in many areas, they are especially significant in light of the anticipated policy changes our new governmental administration plans to enact. The Obama administration intends to act swiftly to regulate business aggressively. Upcoming developments will give employees avenues for administrative and judicial relief that we have not seen for many years. In fact, Congress will address one of the most significant proposed labor law legislations in the last fifty years: the Employee Free Choice Act (EFCA).

If passed, EFCA would greatly enhance employees' abilities to unionize. Currently, unions must obtain signatures from 30% of an organization's employees before requesting an election. The election then cannot take place until an open campaign period has passed. During this period, both the union and the employer can present information to employees. In contrast, EFCA eliminates the open campaign period and only requires that a union present cards signed by 50% plus 1 of the employees in order to gain the right to

represent an organization's employees. Consequently, management may never learn that a union has approached employees until the union presents the required signatures to the organization.

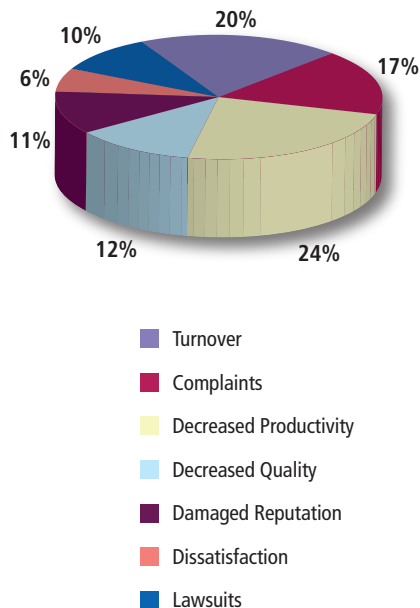
The possible effects of EFCA on organizational structure, productivity, and efficiency could be profound. For many organizations, this legislation could lead to potentially catastrophic costs and distractions. Waiting to see what might happen or issuing meaningless directives is a prescription for disaster. Instead, this is a time when employers must dedicate themselves to recognizing and remediating the issues that fester within their organizations – the issues that promote unionization in the first place.

What are these issues? One survey participant describes them as "problem conduct [that] does not cross the line into the illegal, and it's kept quiet through fear and intimidation." Another participant complained about "unprofessional behavior that breaks down morale." Notice that both respondents refer to behavior that, while not illegal, still undermines employee relationships. These responses carry great significance in light of the upcoming legislative considerations of the Employee Free Choice Act, for the subtle yet destructive behaviors often become the stimuli for unionization efforts. Conversely, illegal behaviors are more often clearly delineated and communicated, and organizational systems provide specific steps for reporting and remediating them within the system.

The survey participants also noted that the business costs of inappropriate behavior in their organizations were due largely to legal but unprofessional behavior. In fact, lawsuits and settlements accounted for only 10% of the business costs resulting from poor behavior, while 83% of the business costs were attributed to issues such as decreased productivity and quality, increased complaints, and high employee turnover. These statistics highlight the bottom line: bad behavior means bad business, and bad business destroys profits.

2009: A Year for Change *(continued)*

What business costs have resulted or are anticipated as a result of the inappropriate behaviors?



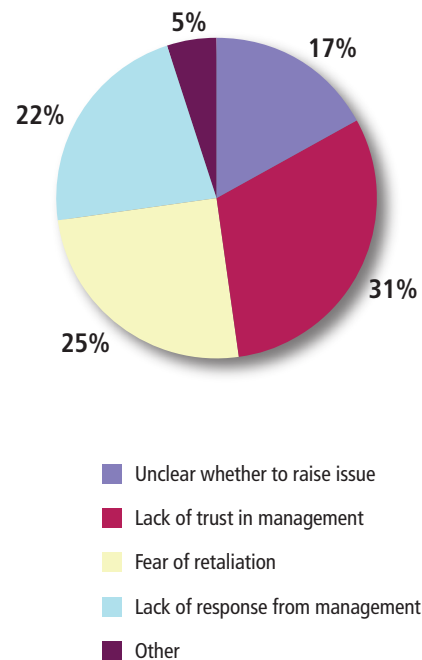
The statistics also illustrate the subtlety of unprofessional behavior. As noted above, when plainly illegal behavior occurs, most employees know their options and how to use them. On the other hand, unprofessional but legal behaviors, the gray matters, often leave employees with nowhere to turn. If EFCA reaches enactment, however, employees will have a new option for addressing the gray matters. They will simply let their unions address them.

For example, consider this scenario: an organization tolerates managers who display unprofessional or unethical conduct that does not qualify as illegal yet is vexing and distracting to employees. When a union approaches the employees, the union organizer can argue that while such conduct cannot be addressed through a legal claim, it can be addressed and resolved through a contractual bargaining agreement. Needless to say, this organization will soon find itself embroiled in union negotiations.

The Crucial Element: Welcoming Employee Concerns

Interestingly, the survey reveals a second issue that is the key to understanding the ongoing struggles that organizations have with unprofessional behavior. A clear disparity exists between the reporting processes for unprofessional behavior and employees' confidence that the reporting system is effective. For example, while 62% of the respondents stated that their employees were most likely to go to their managers or Human Resources with their concerns, they also indicated that employees did not trust management to rightly respond to their concerns. 31% believe their employees do not trust management to resolve issues, while another 47% believe that employees either fear retaliation or consider their managers uninterested in employee concerns.

Why do you believe your employees are reluctant to bring forward concerns to their immediate manager?



The Crucial Element: Welcoming Employee Concerns *(continued)*

As mentioned in a previous quote, one participant specifically stated that the reporting system fails because behaviors within the gray areas are “kept quiet through fear and intimidation.” Another survey respondent went so far as to say that “communication is discouraged” within the organization. But the following quote is perhaps the most telling. This survey participant noted, “[Managers] do not take employee concerns seriously, considering employees who raise issues as complainers or whiners. They also do not bring the issues to HR for consideration and do not partner well with HR in attempting to resolve problems.” With the statistics mentioned above, supported by the underlying conduct described by these survey participants, increased employee turnover is no surprise.

With EFCA considerations potentially months away, these alarming statistics indicate that employees who do not believe that management cares about their work issues will likely seek outside resources, such as a union, to hear and respond to their concerns. Unions will be poised and ready to reassure employees that they can achieve for employees what employees cannot achieve for themselves by working with their managers. If employees’ concerns have fallen upon deaf management ears, employees will all too likely be willing to believe unions – rather than management. Under EFCA, employees will have only one opportunity to vote for or against a union. That “vote” will take the form of an authorization card that can be obtained through peer pressure. The vote may also be based upon one-sided information (the union’s view only) and potentially incomplete information regarding the benefits and detriments of being represented by a union. In contrast to current procedures, employees will not have the opportunity to vote for or against a union in a secret ballot election after receiving information from their employer about the pros and cons of working in a unionized workplace. Rather, once 50% plus 1 of the employees in a collective bargaining unit have signed authorization cards indicating that they wish to be represented by a union, the union

will be in place. Once a first contract is negotiated, the contract will remain in place for two years. Accordingly, an employees’ interest in having his or her concern heard by someone who will listen, such as a union, will have a significant and lasting impact on an employer.

If organizations expect to handle their employment issues within the organizational system, rather than negotiating through a union, they must move quickly and decisively to create a welcoming atmosphere for employees’ concerns. Furthermore, managers must learn to go beyond listening to concerns to learning how to address concerns appropriately. Often, leaders ignore employee concerns because they are ambiguous or even unfounded. ELI’s survey found that managers are “annoyed by issues... don’t know how to resolve the issues”, or they do not “appreciate the level of concern” that employees feel. Other respondents stated that managers “don’t take complaints seriously” or even “dismiss their employees’ concerns.”

Yet even the ambiguous or unfounded concerns must be addressed and resolved in order to preserve a positive and productive work environment where employees trust their managers rather than turning to negotiating parties who have no concern for the wellbeing of the organization as a whole.

A Foundation of Values

While such subtle behaviors that harm employee relationships may seem too vague to address, they are, in fact, treatable...even curable. The cure lies in building a foundation of values that permeates every aspect of how an organization conducts business. ELI’s survey indicates that employees’ concerns encompass issues such as unethical actions, abuse of authority, humiliation, ostracism, and ignored or stifled complaints. These are the inappropriate behaviors that destroy trust between employees and managers; these are the behaviors that sever the lines of communication which are essential to welcoming

A Foundation of Values *(continued)*

and resolving employee concerns. Yet these behaviors can be difficult to define; therefore, remediation requires a holistic values approach, comprehensive in nature and frequently reinforced.

Companies cannot expect their managers to intuitively grasp the importance of values such as welcoming employee concerns, establishing mutual respect, or nurturing employee trust. While these skills may be natural for some, many leaders need training to learn them. Too often organizations grasp at training initiatives that simply deliver information; however, telling managers what they should do does not get the job done. Instead, values training should be experiential and focused on teaching straightforward, concrete skills that enable supervisors to manage proactively rather than reactively, creating a work environment that is not only lawful but professional, inclusive, ethical, and consequently, productive.

As noted previously, no resource can adequately cover every specific behavior that qualifies as unethical or unprofessional, so how can leaders learn to avoid them? What reference point can they use to analyze their behavior? That reference point must be a foundation of values that the organization not only subscribes to but insists upon. The good news is that these professional values are not complex. They are concise and concrete, yet they provide positive guidance in any situation management might encounter.

- *Communicate honestly.* Credibility is crucial, and must be built over time in routine interactions.
- *Listen to concerns.* Managers must convince their teams that they want to hear about problems and then be available and attentive when employees approach them.
- *Address problems promptly.* A tardy response is the same as no response at all. If the problem requires time to resolve, tell the employee that and update them periodically.
- *Act professionally.* Leaders must guard their words and actions, and they must be consistent in

their treatment of employees. They should never resort to yelling, offensive comments, or sarcasm, and when they do fail to act appropriately, leaders should apologize and change their behavior.

The manager who addresses each situation within the framework of these values is the manager who gains the confidence and loyalty of employees. These managers are any organization's best defense against divisive issues, even unionization efforts, that can undermine organizational structure.

Analysis of Current Training Initiatives

Interestingly, the survey participants did not indicate that an absence of training is the culprit in poor employee-management relationships. Instead, over half (54%) of the survey respondents reported that their managers currently receive training on how to respond to employee concerns, and almost half (49%) indicate that their managers receive training on how to encourage employees to raise concerns. As previously noted, however, employees still do not trust management's handling of their workplace concerns, suggesting that whatever training is offered is ineffective in terms of having the desired impact on managers' application of key skills and also, perhaps, understanding why the skills are important.

One deficiency related to the effectiveness of training appeared in how often the organizations communicate their values. When asked to indicate the frequency of their communication of values, the largest segment of respondents (26%) stated that their organizations only communicate values 1-5 times per year, and the majority of that communication is impersonal, such as newsletters. While written communications can be effective tools for reinforcement, the primary source of values must be leadership role modeling. As one survey participant noted, "Management must walk the talk and require everyone else to do the same." Employees quickly learn to ignore communications such as newsletters if their managers do not incorporate the written message into their daily interactions.

Analysis of Current Training Initiatives *(continued)*

In the face of a possible increase in unionization, management training for welcoming and responding to employee concerns must be more results-oriented, and the values system of the organization must be communicated frequently and meaningfully. As the voice of the organization, leaders must learn to talk about specific values in their day-to-day dealings with employees so that employees trust them to act on those values and proactively address their concerns.

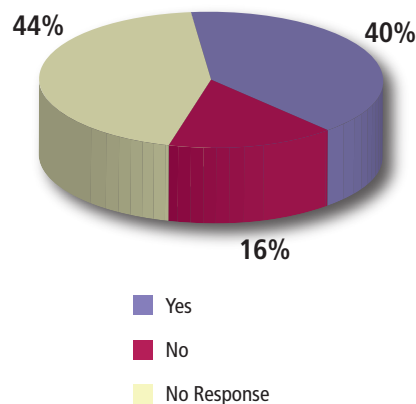
Welcoming concerns, for example, is itself a value that managers should discuss within their departments and then demonstrate in their daily behavior. Managers should frequently stress their willingness to hear employees' concerns; furthermore, they should give specific examples of how they will work with employees to resolve the concerns. When employees realize that managers are serious about addressing their concerns, they will be less likely to turn to unions to represent their interests.

Measuring Values Training Effectiveness

Like the training initiative enigma, values training also presents a puzzling disparity. Again, the problem is not the absence of values; on the contrary, 56% of the survey participants indicated that their organization has a formal values statement. 36% indicated that the values statement seeks to set the standard for workplace behavior, while almost 40% responded that the values statement specifically defines a desirable workplace culture. Why, then, do we find employee concerns centering on behaviors such as bullying and retaliation? Obviously, an organizational values statement does not automatically translate into a values-oriented organization.

The survey pinpoints an important gap that companies must bridge if values are to be anything more than a document. The gap occurs at the point of accountability. Less than half of the respondents (40%) incorporate the values into their performance management process. Therefore, although the values statements are in place, not enough is done to measure their effectiveness. Consequently, large segments of management remain unaccountable for incorporating into their day-to-day behavior the necessary skills for preventing unprofessional behavior and for resolving employees' concerns about values-related issues, such as workplace ethics, mutual respect, and bullying.

Are the values incorporated into your performance management process?



In short, this statistic proves that many managers are not held accountable for creating and maintaining strong employee relationships, a factor that contributes as much to productivity as setting sales goals or interacting appropriately with clients. Strong relationships between management and employees, in fact, are the foundation for productivity; without trust between the two, no organization will reach its business goals.

Incorporating Values in the Workplace Culture

Considering the results of the survey, the importance of values in the work culture cannot be overstated. If the majority of reported issues confronting organizations fall under the category of unprofessional behavior rather than illegal behavior, then only an integrated culture of professional values can address the issues. More critically, if employees believe that management does not welcome their concerns about this problematic behavior, they will inevitably seek resolution for their concerns from other sources, including the courts and union organizations.

ELI's survey reveals a need for organizations to go beyond values statements, handbooks, and directives and provide, instead, values training that is results-oriented. Specifically, values training should provide measures and guidelines which enable managers to evaluate their effectiveness in two areas: communicating values to their employees and incorporating those values into their own behavior. In other words, managers must learn how to teach their employees the guidelines for professional, ethical behavior and then reinforce that teaching daily by role modeling the behavior in every aspect of their workplace interactions with other employees. Finally, organizations must hold management accountable for building the strong employee relations that can only come from values-based leadership.

These values-based skills are an organization's best defense against unionization efforts. When employees know that management respects them, when employees know that management welcomes their concerns, when employees know that management will resolve the issues they bring to them, they have no need for unions. Indeed these employees will reject the overtures of a union and the risks of the unknown in favor of what they already have and know: a professional workplace environment they trust and value.

About the Author

Stephen M. Paskoff, Esq., is the founder and president of ELI®, a training company that teaches professional workplace conduct, helping clients translate their values into behaviors, increase employee contribution, build respectful and inclusive cultures, and reduce legal and ethical risk.

Mr. Paskoff is a nationally recognized speaker and author on workplace legal issues. He has written extensively on topics related to workplace compliance and legal issues and how to affect culture change in order to build lawful, professional operations that align with an organization's mission and values. He has been named the highest-ranking speaker at the national conference of the Society for Human Resource Management (SHRM) and has been selected to speak at a number of other national conferences including:

- The American Bar Association (ABA)
- The Society of Corporate Compliance and Ethics (SCCE)
- The Ethics and Compliance Officer Association (ECO)
- The American Society for Healthcare Human Resources Administration (ASHHRA)
- The Health Care Compliance Association (HCCA)
- The American Society for Training and Development (ASTD)
- The Industry Liaison Group (ILG)
- Child Health Corporation of America (CHCA)
- The Risk Management Foundation for the Harvard Medical Institutions

In addition, Mr. Paskoff was the founding Co-Chair of the ABA's Compliance Training and Communication Subcommittee, which explores best practices in training methodology as well as overall strategies for implementing learning and communication plans to maintain corporate compliance. He currently serves on the Editorial Board of Workforce Management magazine.

Mr. Paskoff and ELI® have appeared on or been interviewed by a variety of national media outlets, including: ABC's 20/20, CNBC, Christian Science Monitor, Corporate Legal Times, Corporate University Review, Forbes, Fortune, Fox News, HR Executive Magazine, HR Magazine, HR News, HR Reporter, Inc. Magazine, Industry Week, Workforce Management, The Los Angeles Times, The New York Times, Training Magazine, and USA Today. He is the author of the book *Teaching Big Shots to Behave and Other Human Resource Challenges*.

Prior to establishing ELI® in 1986, Mr. Paskoff was a trial attorney with the Equal Employment Opportunity Commission and a partner in a management law firm. He is a graduate of Hamilton College and the University of Pittsburgh School of Law and is a member of the Pennsylvania and Georgia bars.

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