

## **TOLERATING YOUR CO-WORKERS**

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Since our focus for this issue is on tolerance, an article on tolerance of co-workers seems fitting. This article is intended to be useful not only for dealing with your own co-workers, but also for advising clients on issues that they face in having their co-workers tolerate each other.

I often receive cold calls from people who are unhappy with a co-worker's or a supervisor's behavior and want to take legal steps to make them change. The callers are usually surprised to learn that the law does not require fair and courteous treatment of all employees, or that they cannot successfully file suit when they are passed over for a promotion because of a personality conflict. However, like most areas of the law, there are exceptions.

### **What the Law Can Do For You**

Tolerance of co-workers can be more than an ethical or a management issue. Even in an at-will environment like Washington State, some types of tolerance are mandated by the Fourteenth Amendment, Title VII of the Civil Rights Act, the Washington Law Against Discrimination ("WLAD," a/k/a RCW Ch. 49.60) and local ordinances. These laws require tolerance of employees' differences attributable to matters such as age, race, religion, national origin, disability, creed, sex, marital status, veteran's status, etc. If you are under the jurisdiction of the City of Seattle, you can add sexual orientation, gender identity, and political ideology to the list pursuant to SMC 14.04.020.

If there is a tolerance issue based on failure to comply with the civil rights or discrimination laws, the first step is to determine what the employer's policies provide for and follow the policies. If there are no policies or following them does not lead to a resolution, employees may file a complaint with an agency such as the EEOC, Human Rights Commission or City of Seattle Office of Civil Rights, or seek assistance resolving the issues through an attorney. If there is a collective bargaining agreement or other binding obligations on the employer through an employment contract or manual, there may also be a remedy through a grievance process.

### **Disabilities Laws Pose Difficult Challenges**

One of the most difficult aspects of tolerating co-workers is addressing disability-related issues. Laws such as the Americans with Disabilities Act ("ADA"), WLAD, and the Family Medical Leave Act ("FMLA") all raise issues that affect co-workers' tolerance. The ADA and the WLAD require reasonable accommodation of disabilities such as depression, attention deficit disorder, obsessive compulsive disorder, schizophrenia, and other conditions that may affect the individual's relations with co-workers. Some employees may have difficulty tolerating a disabled co-worker's diminished communication skills, lack of friendliness, need for an isolated or low-stimulus work environment, shorter work hours, etc., which can lead to resentment and negativity in the workplace, or, in a worst-case scenario, retaliation or discrimination by co-workers.

The situation may be compounded by the fact that the employer is required to keep the information regarding the disability confidential, which means that an employer cannot explain why a co-worker's behavior is different from other employees' behavior, or why a co-worker appears to be getting special or favorable treatment, such as an enclosed office instead of a cubicle or reduced hours or additional time off.

The FMLA, which allows for time off or reduced work schedules for employees who have a serious health condition or who have family members with a serious health condition, can also cause resentment among co-workers who may have to work harder to make up for their co-worker's absence.

In most circumstances, it is helpful to enlist the services of an employment attorney to address the complexities of the disabilities laws and the discrimination laws, as the law is not settled in these areas, and a mistake can be expensive.

### **Human Resources' Role**

In many work environments, there is a Human Resources department that may be willing to provide help ranging from a friendly ear for employee complaints to intercession in an intolerable situation. However, the role of the Human Resources department varies widely from one employer to another, so they may not be the best source for addressing co-worker complaints in all organizations. Additionally, one's supervisor or manager may be able to provide assistance, depending on the nature of the problem and the supervisor or manager's skills in this area.

If the issues causing friction between co-workers are not something that obviously fits within the employer's policies or the civil rights laws (such as personality conflicts or disagreements about how to do a project together) and there is no human resources or managerial assistance available, or the issue appears to be too small to take to management, self-help may be appropriate.

### **Practical Guidance**

On the self-help front, clear communication is invaluable. Communication is also the key for managers who are dealing with co-worker tolerance issues. A difficult discussion with a co-worker can be made easier by documenting the issues in advance of the discussion. Outlining the issues can provide a clear road map for the discussion, and can highlight any areas where you may need to gather additional information before having the discussion. It can also give extra time to reflect and to consider how your communication will come across so that you do not make the relationship worse by saying something you will regret later. It may also be useful as evidence if there is ever a dispute about what your discussion included, provided that you follow it in your discussion.

Documentation prior to a discussion with a co-worker or someone you supervise can include (among other things), outlining the following:

- Description of the issue.
- The facts or examples or other information illustrating the existence of the issue.

- The negative effects caused by the issue.
- Reviewing any prior discussions on the same issue or on a related issue.
- Your expectations for change (be specific, including timelines).

The other side of communication is listening. After explaining the above to the co-worker, pay attention to the response and try to place yourself in the co-worker's shoes to see the situation from the co-worker's perspective. Engage in a dialogue that is non-judgmental and that avoids sarcasm and bullying. Like any other relationship, the workplace relationship may require some empathy for the other person's position and some compromises in order for all parties to work together. If a compromise cannot be worked out, then establish consequences, if there are any you have the power to impose. These could include, for example, nagging, withdrawing support for the co-worker in an area where the co-worker needs your assistance, involving a higher level of management, enlisting the assistance of other co-workers to set clear boundaries for inappropriate behavior, or using other leverage where you have influence. Occasionally, employers will bring in an outside mediator or someone who specializes in workplace psychology to try to get at the root of the problem.

### **Going to the Top**

If you decide to take the problem to a higher level of management, be sure that your concerns and expectations are realistic so that management does not perceive you to be the problem. This is especially true if the person you are complaining about is perceived as being more valuable to the organization than you are, or if resolving friction between the employees is part of your job description. Being able to outline what you have already tried and offering practical suggestions for resolving the situation generally will make higher management more interested in addressing the issues.

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*The above suggestions are broad, general comments only, and are not legal advice. Individual situations require individual analysis. For assistance with a specific situation, contact an attorney with experience in this area, such as the author, who is Chair of the Employment and Labor Law Practice Group of Ogden Murphy Wallace, P.L.L.C. and Bar Talk columnist. She can be reached at (206) 447-7000 or by e-mail at [ksutherland@omwlaw.com](mailto:ksutherland@omwlaw.com).*