

A MANAGEMENT EMPLOYMENT LAWYER FINDS HIDDEN MEANING IN TELEVISION'S MOST ENTERTAINING DEPICTION OF THE MODERN WORKPLACE.

The Office

Top Ten
Employee
Relations
Lessons
Learned From
NBC's *The
Office*

BY MATT STILES



MICHAEL SCOTT HAS A LOT TO TEACH YOU ABOUT MANAGING—AND SURVIVING—THE OFFICE. Even if you haven't seen NBC's hit comedy, *The Office*, chances are you've worked with someone like Michael (Steve Carell), *The Office's* inept, self-absorbed and uncomfortably irritating boss whose awkward, humorous—albeit well-intentioned—efforts to win the respect and admiration of his employees are met with chronic disappointment.

The Office gives us a weekly glimpse of the overworked, underappreciated, and hyper-regulated workplace of a Pennsylvania-based paper retailer. Behind each absurd Office conflict, or in Michael's candid, insecure and often terribly incorrect tips of management insight lie golden nuggets of wisdom. As a management employment lawyer, I present to you the top ten lessons from *The Office* of what **NOT** to do when it comes to employee relations.

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CHILI'S IS THE NEW
GOLF COURSE. IT'S
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IN THE SEASON 2 EPISODE, "The Client," Michael works to land the local county government as a new client. Certain that Michael can't close the deal, the corporate office sends Jan (Melora Hardin), Michael's boss, to Scranton. Jan learns that Michael has switched the location of the client meeting from the Radisson to the neighborhood Chili's because, as Michael insists, "Chili's is . . . where business happens." Over Awesome Blossoms, baby back ribs and cocktails, Michael lands the client.

Today's work place is wherever work is done. Whether it's landing the new client at a business dinner or working from home on a flex schedule, work frequently happens outside of the office. Combine the convenience of mobile technology and flexible

work/life balance programs with an employer's need to drive efficiency and production and the result is that employees can work anywhere, anytime. For this reason, an employer's obligation to enforce its code of conduct extends beyond the four corners of its offices to wherever working employees are found.

Improper conduct at the office is improper conduct wherever work is done. If you manage a business that allows or requires employees to work offsite, make sure that your policies are worded so that offsite work is covered. If you're an employee who works offsite, don't confuse a relaxed atmosphere for an unregulated one. **FYI #10** The long arm of employment law extends to wherever, whenever you work, whether it's in the comfort of your home or over an Awesome Blossom.

TELLING EMPLOYEES "YOU'RE HIRED AND YOU CAN WORK HERE AS LONG AS YOU WANT," ISN'T REALISTIC, AND EMPLOYERS MUST PREPARE FOR THE INEVITABILITY OF TERMINATING EMPLOYMENT.

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WHEN ADDRESSING EMPLOYEE PERFORMANCE, CONSIDER BOTH CONSTRUCTIVE CRITICISM AND "CONSTRUCTIVE COMPLIMENTS."

AS HIS OWN PERFORMANCE REVIEW WITH JAN APPROACHES, in the Season 2 episode "The Performance Review," Michael conducts office-wide reviews. To provide evidence to Jan that he is a good manager, Michael reminds everyone about the office suggestion box and asks for "constructive compliments" which are to be read for Jan in a meeting that day.

At the meeting, Michael tells everyone he enjoys reading their suggestions each and every week. He pulls the first suggestion from the box and reads, "What can we do about Y2K?" Quickly moving on, Michael reads the next suggestion, written by an employee who left a year ago. The next two suggestions are, "you need to do something about your B.O." and "you need to do something about your coffee breath."

In most offices, we seldom have a forum to gripe about our co-workers' personal hygiene (not counting the anonymous note left on an office chair, of course), but we are usually being evaluated by somebody on a daily basis. In most offices, employees receive disciplinary memos when they fail to follow a policy or when performance lags. Seldom do you see complimentary memos or documented appreciation when employees exceed expectations. In this way, employers are failing their employees and their businesses. When the employer has to decide between Mary and John for the promotion, wouldn't it be helpful to have not only a record of how each has failed, but also a record showing where each has achieved? **WATER COOLER TIP #8** Next time that project is finished ahead of schedule or an employee volunteers to work a holiday, employ the constructive compliment.

FACED WITH HAVING TO DOWNSIZE office personnel in the Season 1 episode, "The Alliance," Michael tells the camera, "I think if I had a catchphrase, it would be 'You're hired and you can work here as long as you want.' But that's unrealistic, so."

Most of us will never be invited by our employers to work, unconditionally, as long as we want, and most of us will never have an employment contract. Like most states, Florida is an "at will" employment state. At will means that unless you have an employment contract, either employer or employee can end the employment relationship for good reason, bad reason or no reason at all, so long as it's not an illegal reason.

Employers can fire you for business reasons: you're a poor performer or the lack of work requires a layoff. They can fire you for subjective reasons: you dress sloppy or have poor hygiene. They can fire you for stupid reasons: they don't like the car you drive or they think you're smarter than them. They can fire you for personal reasons: you didn't buy a fundraiser candy bar from their kids or you embarrassed them in a game of basketball.

Illegal reasons, for which an employer can't fire you, include those that are based on protected traits, such as race, sex, religion, national origin, age, disability or pregnancy. In addition to firing, if an employer's reason for hiring, demoting, promoting, handing out job assignments or responsibilities or paying wages is based on one of these traits, the employer is violating the law. Generally, it is also illegal for an employer to retaliate against an employee for making a complaint protected by law, for participating in a regulatory or legal proceeding on behalf of another complaining employee, for refusing to break a law, or for taking a protected leave of absence. **COFFEE BREAK #9** When hiring and firing, employers don't need a catchphrase, they just need a legal reason.

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"I THINK THE MAIN DIFFERENCE BETWEEN ME AND DONALD TRUMP IS THAT I GET NO PLEASURE OUT OF SAYING THE WORDS 'YOU'RE FIRED' ... HE JUST MAKES PEOPLE SAD. AND AN OFFICE CAN'T FUNCTION THAT WAY."

In the Pilot episode, Michael explains to a new employee, Ryan (B.J. Novak), "I guess the atmosphere that I've tried to create here is that I'm a friend first, and a boss second, and probably an entertainer third." Later that season, in "The Alliance," Michael provides the camera with one of his many pearls of management wisdom, explaining that his style is a contrast to that of Donald Trump, who seems to enjoy saying "you're fired."

Many managers and business owners think the path to good employee relations is through friendship. There's nothing wrong with being friendly to your employees, but a manager has got to have some backbone if he or she wants to encourage employee performance. Fear of confrontation is normal, but if fear prevents you from giving honest feedback or terminating a problem employee, you're not management material.

When poor performance, misconduct, or the need to downsize requires you to terminate employment, think of it as a de-hiring process. Keep in mind the costs of hiring new employees: placing ads, reviewing applications, conducting interviews, selecting the candidate, training and building trust. You can be decisive like Donald Trump, but if poor performance or misconduct requires you to terminate, don't think of the boardroom; think of what it took to get that employee in the door. **RESTRUCTURING TIP #7** Your de-hiring process should be just as thoughtful, multi-step and deliberate as your hiring process.

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6 In the Season 2 episode, "Email Surveillance," Michael upsets the office by monitoring their emails. Once the email surveillance software is installed on Michael's computer, his first email search is for "Michael Boss Funny." Angry employees ask Michael why he is reading their emails and Michael denies it. He then finds out the corporate office, by internal memo, notified employees of email monitoring. One employee, Kevin (Brian Baumgartner), tells the camera, "I've gotta erase a lot of stuff. A lot of stuff."

Employers don't have to tell employees everything, but being open, honest, and having transparent processes creates the perception of fairness, fostering a positive work environment. My clients frequently ask whether or not an employee can sue for a particular employment decision. The answer is always "yes"—anybody can sue for anything. Few lawsuits ever go to trial, but all lawsuits are expensive, whether you did the right thing or not. For this reason, the question my clients are really asking is, "How can I make this decision without provoking a lawsuit?" My answer is always a simple one: "Make it fair."

We've all been warned that life isn't fair, but when it is fair, we're more likely to accept it, even where we might disagree with it. Employees don't file lawsuits because they think their employer violated some particular law. Instead, employees go to lawyers when they think they've been treated unfairly. They let the lawyer figure out which law applies to their case. It's that trip to the lawyer's office that the employer can avoid when it acts fairly.

Have to make a tough decision about whom to lay off? Establish key criteria for your decision. Seniority is usually a good factor, although not required by law. Performance goals and how often an employee meets or exceeds them also make for good criteria. Once you have the criteria, communicate them, perhaps by a staff meeting (no email or memo can replace the value of face time). To allow them a chance to be heard, give an interview to each employee you consider for layoff. If the decision is a tough one, admit it. When you communicate your decision, have your information ready, showing how the facts relate to your criteria. **DELIVERABLE #6** Sure, there are a lot of things a boss doesn't have to—and probably shouldn't—share with his employees, but when faced with making tough decisions that affect jobs, being open, honest and fair is smart risk management.

6 "THERE ARE CERTAIN THINGS A BOSS DOES NOT SHARE WITH HIS EMPLOYEES. HIS SALARY—THAT WOULD DEPRESS THEM. HIS BED. AND I AM NOT GOING TO TELL THEM THAT I WILL BE READING THEIR EMAILS."

5 BURNING YOUR FOOT ON A GEORGE FORMAN GRILL DOESN'T NECESSARILY CAUSE YOU TO BECOME DISABLED.

MICHAEL BURNS HIS FOOT ON A GEORGE FORMAN GRILL prior to coming in to work in Season 2's, "The Injury." Michael explains that he likes to have breakfast in bed and so before going to bed, he lays bacon on his George Forman grill. When he wakes up, he plugs in the grill and goes back to sleep. Then he wakes up to the "smell of crackling bacon." On this morning, Michael stepped on the open grill. When Michael gets to work, he expects the office to work around his injury. After the office pays him no attention, he brings in a paralyzed man in a wheelchair to teach them about working with disabled people.

Burning your foot on a George Forman grill is probably unlikely to happen in your office. Still, on-the-job injuries can happen in any work environment. When injury occurs, the employer must take it seriously. Your employee handbook should include instructions for reporting injuries and provide any necessary forms. If your work place is a shop floor or manufacturing line, post convenient signs telling employees what to do if injured. Employers should also have an arrangement with a local clinic or hospital for employees to receive immediate medical treatment. Employees in dangerous jobs should know where this facility is and how to get there. Injury policies should allow for someone to drive the employee to the clinic or hospital if the employee cannot drive himself.

If an injury results in the employee filing a workers' compensation claim, do not retaliate against the employee. Employers subject to the Americans with Disabilities Act (15 or more employees) or the Family and Medical Leave Act (50 or more employees), should consult their employment counsel to determine whether other legal compliance is required. **INTEROFFICE REMINDER #5** Injuries and other employee medical conditions, no matter how absurd, will usually require some kind of work place accommodation. Employers should be open-minded, flexible and reasonable with these accommodations.

4 DIVERSITY: A GOOD THING. DIVERSITY DAY: NOT FOR EVERYBODY

CORPORATE SENDS A DIVERSITY CONSULTANT, MR. BROWN (Larry Wilmore), to visit the office after an employee complained about Michael's rendition of a Chris Rock joke in Season 1's "Diversity Day." Mr. Brown opens the meeting but can't get a sentence in without an interruption from Michael, who offers his own diversity advice. Michael suggests an exercise: "Everybody should say a race that they are attracted to sexually."

There are many personal, economic, employee morale and legal rewards for having a diverse work place. Where projects like diversity training, sensitivity training, or anger management become necessary for one or more employees, these training programs should be administered by qualified training professionals. If your office is too small to justify hiring someone to train your entire staff, there are a number of external training courses offered by third parties for individual enrollment. Training of this kind shouldn't be limited to use as a disciplinary remedy. **BENCHMARK #4** Although no substitute for a Chris Rock routine, diversity, sensitivity and anger management training, even on a small scale, are smart components of any new employee orientation program.

YOU PROBABLY DON'T WANT TO KNOW IF YOUR EMPLOYEES SUFFER FROM "HOT DOG FINGERS," "GOVERNMENT CREATED KILLER NANO ROBOT INFECTION" OR "COUNT CHOCULITIS."

In Season 1's "Health Care," Michael is afraid of upsetting the employees, so he assigns Dwight (Rainn Wilson) to inform them of the company's new, reduced health care benefit. As Dwight struggles to pick a health care plan that provides the least benefits, he asks everyone for a list of their medical conditions. Jim (John Krasinski) lists such illnesses as "Hot Dog Fingers" and "Count Choculitis." Accusing Jim of health care fraud, Dwight asks him, "Count Choculitis. . . Why did you write that down, Jim? Is it because you know I love Count Chocula?" Employee medical situations can be the most difficult personnel issues (cue the burned foot on a George Foreman grill). So many different laws intersect with injured, sick or disabled employees that the entire area of the law is an employer's nightmare. The most important rule to remember when navigating employee medical issues is to never substitute your medical opinions for those of a licensed health care practitioner, no matter how commonplace or ridiculous the employee's medical condition may seem.

Of course, it sounds ridiculous to send your employee for medical certification of "Count Choculitis," but if the employee requests an accommodation for a disability protected under the Americans with Disabilities Act or asks for leave under the Family and Medical Leave Act, the employer has an obligation to reasonably accommodate qualified disabilities and provide protected leave for serious health conditions. Different rules apply depending on how many employees you have and what kind of condition the employee has.

IN A NUTSHELL #3 Ultimately, a thorough certification of the health condition from a physician will usually provide the employer with enough information to determine what the law requires. That medical certification should also weed out any responsibility you might have to deal with the Government Created Killer Nano Robot Infection.

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NOT EVERYONE IS GOING TO UNDERSTAND WHAT "UPDOG" IS, AND WORK PLACE BANTER IS FULL OF STATEMENTS THAT COULD BE RESPONDED TO WITH "THAT'S WHAT SHE SAID," BUT SHOULDN'T.

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IN SEASON 2's, "THE SECRET," JIM ASKS MICHAEL if he thinks it "smells like updog in here?" to which Michael replies, "What's updog?" Jim replies, "Not much, what's up with you?" For the rest of the day, Michael attempts to re-create the joke with others in the office, but fails when they either don't respond or don't feed him the correct punch line. In the office, Michael's only successfully employed comedic device is a quick, "That's what she said," retort to any sexual innuendo or double entendre.

In Season 2's "Sexual Harassment" episode, Michael pledges to clean up his act, including not saying "That's what she said." Jim responds, "Wow, that's really hard." Michael bites his tongue and shakes his head. Jim asks, "You really think you can go all day long?" Michael grimaces in pain at not being able to respond. Jim says, "Well, you always left me satisfied and smiling," to which Michael belts out "That's what she said!" with a gasp for air.

Obviously work is allowed to be fun—and what luck when it is! Work conversations don't always have to be about work, but even talk "around the water cooler" or coffee klatch must be appropriate for work. Employers must be prepared to draw the line at offensive, insulting or unacceptable speech at work. Isolated incidents of offensive speech are rarely, if ever, illegal, but that doesn't mean they should be tolerated. Employee handbooks should include policies prohibiting offensive or insensitive speech. But merely having a policy is not enough. It's a manager's own conduct that sets the tone for what is and is not acceptable at work. COFFEE KLATCH #2 Lead by example. If you're the one making work a sexual subject by retorting, "That's what she said," don't be surprised when that sexual joke provokes a charge of sexual harassment.

IN THE SEASON 2 EPISODE, "SEXUAL HARASSMENT," Toby (Paul Lieberstein), the office's human resources representative, provides training on sexual harassment. At the end of the training, Dwight asks Toby what the female anatomy looks like. Toby tells the camera, "Technically, I am in Human Resources, and Dwight was asking me about human anatomy. Um, I'm just sad the public school system failed him so badly." Whether you're in human resources or a manager who occasionally wears an HR hat, managing people is a messy, complicated business. Check your personal sensitivities and notions of indecency at the door. Whether it is a sticky

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MOST EMPLOYERS AND HUMAN RESOURCE PROFESSIONALS ARE NOT EXPERTS IN "HUMAN ANATOMY," BUT MANAGING PEOPLE COMES WITH ITS OWN OCCUPATIONAL HAZARDS.

co-employee relationship, an uncomfortable employee medical issue, an offensive racial or sexual harassment investigation or a domestic dispute that carries over at work, on occasion, work is going to become consumed by something other than work. The caveat is: If it can happen, it can happen at work.

ACTION PLAN #1 Today's employers must be prepared for everything from pandemics and natural disasters to on-the-job accidents and work place violence. In the face of turmoil and conflict, employers must keep their cool, treat employees fairly, focus on the legitimate business reasons for their decisions and document why and how they handled each employee situation. 