



# General Counsel Employment Law Report

Prepared By:  
Michael E. Foley, Esq.

December 10, 2019

# Harmony and Your Workplace

Remember those impeachment hearings that were so long ago? Last week? Your workplace was probably tuning in. Recent research claims the distraction cost the US workplace \$2.1 billion an hour. The estimate was derived using the average hourly wage — \$28.18 according to the U.S. Bureau of Labor Statistics — along with the number of Americans who use the internet at work, the percentage of employed Americans who work on an average weekday and the percentage of workers who discuss politics at work and are therefore likely to watch or follow updates on the hearing. A big boost to this stat was the 20 million who reportedly live streamed or listened to the Bret Kavanaugh hearings. I am not convinced this is an accurate method but boy that could be a lot of work time sucked up by current events.

The good news is unlike March Madness—another giant work distraction—illegal betting and work brackets are not an issue. The bad news is unlike March Madness there is no camaraderie and people have very heated opinions about politics. (Full disclosure: I have very strong opinions about the UConn Women's basketball team but this does not seem to ignite much debate at my workplace. They are just so good, who can argue?)

What can you do to bolster a calm, productive workplace?

You have all the tools and know what to do. The workplace is for work. Even in the age of constant media contact, managers and supervisors can and should expect work to get done. Technology creates more opportunity for interruption but the rules have not changed: work can and should be monitored. Employees need to know the expectations. Management should keep non-work debates to the break room or lunch time. The best strategy is to expect and maintain a professional workplace at all times, leaving politics and sports to "off" work time. Do not allow interruptions and political debates to become commonplace. According to a Randstad study last year, seventy-two percent of polled workers feel stressed or anxious when heated arguments occur, and 44 percent say such arguments impact their productivity. Political distraction and debate is a lose-lose for employers.

We can help. If you have questions or a thorny issue on this or any other topic, contact us.

# Easy Employee Engagement: Start with Hello

Recently my 20something daughter mentioned she was training a new hire at her job. She had been there 2 weeks. She was trained by a seasoned employee of 4 weeks. None of them has training in managing or on-boarding employees. I was astonished and she quickly gave me the look. The OK Boomer, this -is- how- it- is- now look.

Her experience was a good reminder to me. With new employees training newer employees, it is best not to make any assumptions about workplace experience and knowledge. Case in point, a recent study that found a simple hello from managers can engage employees. Saying good bye at day's end and asking about the weekend on Monday morning also helped increase employee engagement over time. These gestures might seem basic to those of us at a certain age or with work experience. But for employees who largely communicate electronically—and have done so for years—personal greetings and small talk might seem awkward or even unnecessary. There is nothing small about positive small talk however and the contribution that connection makes. Creating a trusting, inclusive and productive workplace matters.

Of course, Grinch-like managers of any age and experience may need more encouragement than others. Like we always say, workplace culture starts at the top and expectations should be clearly expressed. Many handbooks and policies address culture and expectations but it is the day to day example that sets the tone.

If you have a particularly grouchy employee or do want to train your trainers, we can help. In the meantime, hello, good-bye and have a good day.

# Taking a Stand on the Right to Sit

All roads lead to a Seinfeld episode eventually, and maybe indirectly. In one, George Constanza felt strongly that a store security guard should not have to stand for his entire shift. After George delivered a comfy rocking chair, the security guard fell asleep and the store was robbed. Very Seinfeld but George was on to something: why should an employee have to stand?

The EEOC recently ruled in favor of food demonstrators, granting \$2.65 million in a disability bias action under the Americans with Disabilities Act (ADA). First question: what is a food demonstrator? It is those people in stores and markets who prepare and serve samples. Who knew? Over 100 food demonstrators were denied requests to sit more than 10 minutes every two hours. The EEOC found that permission to sit for longer periods of time would have been a reasonable accommodation for employees with disabilities.

Oftentimes managers do not have the power or the will to exercise discretion in granting simple requests or making policy exceptions, like this one. Simple adjustments—sitting, having a snack or a drink—can keep a small issue from becoming a big ADA problem. Hyatt Hotel's refusal to give a chair to a worker with a chronic back ailment cost almost \$100,000 to resolve. Train managers to ask, how can I help? Empower them to make small adjustments when needed. As we [have addressed](#) before, there are no written requirements or magic words for an ADA request. Supervisors and managers must learn to recognize accommodation requests and document their interactions.

While we have a limited number of chairs to offer, we can help in other ways. Training? Policy? We stand by (sitting actually), awaiting your call.



## General Counsel's Office Hours Special Member Benefit



All CCHRA members in good standing will have the special benefit of being able to call Attorney Michael E. Foley, in his role as the CCHRA General Counsel, to obtain his guidance on employment law compliance issues and corresponding HR-related risk management during his CCHRA GC Office Hours – **at no cost**.

[Click here](#) for the description of the role of the CCHRA General Counsel. As General Counsel, Mike will be available within his virtual and gratis office hours for all CCHRA members from 2 pm to 3 pm on the first and third Tuesday of each month. The guidance Mike provides during his office hours will cover all issues that arise within the broad spectrum of the employment relationship to help CCHRA members achieve compliance with the extensive regulations that govern their workplace and to better understand best employment practices.

Issues related to the Internal Revenue Code/the Internal Revenue Service or ERISA-related issues will not be covered under this arrangement, nor will the interpretation, editing or drafting of documents. The office hours will be limited to providing guidance on employment law questions and corresponding HR-related risk management that can be answered in one telephone conversation. Mike can be reached during his CCHRA General Counsel Office Hours at 508-548-4888.

Mike Foley has been representing employers, small and large, for-profit and not-for-profit within all industry sectors and in all matters of labor and employment law for over 30 years. He draws on the breadth of his experience to offer employers an uncommon approach and practical solutions. [Click here](#) for Mike's bio.