

Lawyers usurping HR practitioners in training work

But some legal professionals lack hands-on experience, facilitation skills

BY KENNETH JACKSON
For Law Times

Companies are more than ever looking to lawyers to train their staff on different aspects of human resources instead of actually hiring a human resources consultant or practitioner, according to a Mississauga, Ont., lawyer.

"I think it is becoming more common," said Patrizia Piccolo, a partner and department head of human resource law at Keyser Mason Ball LLP.

Piccolo notes a simple Google search will show the trend based on the number of law firms offering training. "There are a number of firms, ourselves included, that are in certain areas of HR offering training from a legal standpoint to make sure people are covering off all the legal stuff," she says.

The first one that pops up on a search of Toronto firms doing that is Rubin Thomlinson LLP.

A portion of its web site focuses on this area of law. It even provides a calendar of upcoming training sessions.

"Our participants find these training programs invaluable," the firms says on its web site. "They tell us that, with their increased knowledge, they are better able to manage workplace issues that arise, and their need for legal intervention becomes less and less frequent."

But does that make lawyers a better choice to offer training than their human resources counterparts?

Piccolo is diplomatic in her response.

"As a lawyer, of course, I live and breathe these cases a lot of the time. So I am able to bring that experience or that knowledge base along with the training. The other part, of course, is I am looking at it from a case law and legal standpoint."

If there are steps an employer



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needs to take to ensure that a legal case is successful, it helps to know the law beforehand as opposed to waiting until things have gone wrong, says Piccolo. "It's nice to have that insight or knowledge on [how to] avoid getting into the courtroom and what type of

training, steps or due diligence needs to be put in place in order to meet that legal test."

Marlene Nylassy has decades of experience in the human resources field and is senior vice president of people and engagement at Nelson Education Ltd. in Toronto. Nylassy doesn't necessarily disagree with Piccolo but says human resources professionals should do the actual training of employees.

That doesn't mean it's not important to have an understanding of the laws, she says, noting that having a lawyer come in and provide information can be useful. But she wouldn't want the two to be mutually exclusive of one another.

"I think depending on the culture of your organization, I think there is value in the HR people delivering that training because training is something we know how to facilitate. Having legal expertise come in and

collaborate with that learning specialist is probably your ideal," says Nylassy.

She notes that when lawyers come in, they bring the facts. But a human resources professional deals with the behavioural aspects of how things happen in an organization, she adds. "What the human resource professionals who work in organizations bring to the table is the day-to-day operations of how the organization works and how the culture works in the organization."

Piccolo says she offers training in the areas of harassment, discrimination, termination, and workplace investigations. "Every day is a different day. People get themselves involved in so many different things in the workplace, which makes for sort of an exciting life for me. I think a lot of what's going on in the workplace is not black and white. There's a lot of strategy that gets involved."

According to Piccolo, her clients are looking for someone to bring real-life legal experiences to the training. While someone can talk about the law, companies want her to discuss in detail how certain laws have played out either in the courts in reported decisions or cases she may have dealt with personally. Clients are interested in knowing what the outcome was.

One area clients tend to focus on is termination training, especially for the difficult cases. "I'm talking about the ones that have high legal exposure, high legal risks in that you have to terminate the pregnant employee, the older employee, and so on," says Piccolo.

She tells clients that properly documenting issues in advance of a termination is critical to a successful one. But a bigger success for her is keeping the matter from making its way into the courts in the first place.

"We come to a resolution so we're not spending money fighting," she says, noting the training takes a few hours.

Still, she admits that human resources professionals may have one thing over her. "What perhaps they might have over me is — and I would suppose it would vary depending on the consultant — one of the things I have never done is actually run an HR department. So some consultants may actually have that hands-on experience in the trenches."

At the same time, McMillan LLP's George Waggott echoes one of the issues Nylassy raises. "The one thing I'm going to be quite blunt about is some lawyers are better than other lawyers at actually doing it for training," says Waggott, who has offered training in the areas of termination, discrimination, and harassment to employers for the past 15 years. "Lawyers aren't themselves necessarily trained to be trainers. Some of it is skill set and who people connect with better." ■

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