

# OPINION

Commentary from staff & contributors

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## ANOTHER VOICE

# The pandemic has intensified workplace disputes. Employers need to adapt.

Over the past year and a half, as the Covid-19 pandemic raged, bedrooms became our offices and dogs our officemates. We invited bosses, coworkers and clients into our living spaces through the omnipresent Zoom window.

Now, as companies and their employees begin returning to offices, they face a permanently changed workplace. Zoom and Slack have become ingrained in our work culture. Many Americans say they prefer to continue to work remotely. Hybrid arrangements and flexible office schedules already have become the norm at many companies.

Add to this the impact of #MeToo, Black Lives Matter, “cancel culture” and polarizing political discourse.

As longtime workplace investigators, we have viewed up close how these forces have changed the workplace and, with it, the way in which employment disputes are resolved. Here are some of the challenges executives need to keep top of mind in this new workplace environment:

### ► Not so friendly water cooler banter

Where employees once roamed freely, conversed maskless and shook hands, they now face safety precautions that make human interaction more calculated, less free-flowing—and more problematic. So often, interpersonal conflict, poor leadership and poor communication are the root causes of complaints. The pandemic-defined workplace threatens



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to exacerbate interpersonal misunderstandings and conflicts. This puts more pressure on employers to proactively tackle communication issues as employees return to work.

### ► Zoom mishaps and worse

During the pandemic, Zoom mishaps abounded. While some made for great entertainment (“I’m not a cat”), others were serious sexual harassment complaints. Claims didn’t disappear, they morphed. Inappropriate sexual overtures at out-of-town meetings and conferences were replaced by cyberbullying and offensive Zoom behavior. Studies have shown, and we have seen, that disrespectful behavior, like interrupting and “mansplaining” to female colleagues was exacerbated in virtual environments. Bullying complaints erupted from disagreements about mandatory mask rules, and now, the vaccine. More harassment complaints involve Asian ethnicity. Employers – charged with investigating when they know or should have known of harassment – should be on high alert for conduct that could touch on these issues.

### ► Race and gender inequities boil over

The disruption of the pandemic, working remotely and learning new technology did not blunt the societal impact of #MeToo and BLM. More than ever, employees are prepared to stand up for themselves and others. The demand to recognize racism as an ongoing systemic threat, not just

actions by a few bad actors, has manifested in the workplace with deafening force. Employees have a greater level of sophistication and understanding of how inequity infects the workplace, and will expect that employers recognize and address these issues head on.

For example, discriminatory conduct may not manifest as outright racial epithets, but instead may be a pattern of subtle, indirect slights and insults, often described as microaggressions, that make the workplace untenable. And, when assessing complaints, employers should recognize how factors such as race, class, gender and other individual characteristics intersect to create different expressions of discrimination for employees. Employers must prioritize incorporating principles of diversity, equity and inclusion into the culture and workplace policies. Educating employees, especially leaders, on these principles is critical.

### ► Political tribes dig in

The nation has seen an increase in political disputes. The recent election was a flashpoint for disagreements. What happens when that enters the workplace? As a starting point, employers cannot look to federal and state anti-discrimination statutes. Political belief is not yet a protected characteristic under federal or California state anti-discrimination laws.

Next, then, we look to the First Amendment. In the public sector, government employees have freedom of speech rights under

the First Amendment. In that case, the government employer cannot restrict its employees from political arguments at work. For private employees, however, the First Amendment does not apply.

In California, that takes us to the California Labor Code, which prohibits employers from taking employment action against an employee for political activities that are not work-related. It prohibits employers from forbidding or preventing employees from participating in politics or running for office or controlling or directing the political activities or affiliations of employees. Thus, employers cannot force employees to share their political beliefs. Employers cannot fire someone who supports gun control, voted Republican or posted on Facebook their distaste for the current or past president. This leaves open the murkier question of whether and how a private employer can take action if an employee’s expression of their political views negatively affects coworkers.

Employers will need to seek guidance before taking action. And perhaps more importantly, nurture environments that allow for spirited but respectful discussion about these important topics.

### ► Weak leaders need not apply

We have only just begun to understand the trauma that more than a year of a pandemic has wrought on our society, workplaces, families and schools. It’s impossible to grasp historic change when you’re in the middle of it. As values, views and knowledge change, some people adapt, some entrench and some lead. This can be exciting and inspiring. It also means more discord and conflict in social forums that we thought were more settled and predictable, like the workplace. ❗

SACRAMENTO  
BUSINESS JOURNAL