



“DEAR HELGA” on Tougher issues faced by HR practitioners
Keep the Conversation Going Series - 2022 Philly SHRM Symposium
By: Katie Calabrese

Michael Cohen, Partner, Duane Morris LLP, led the 2022 Philly SHRM Symposium’s fictional HR advice columnist session “Dear Helga.” This session was once again an educational yet lighthearted look at some of the tougher issues faced by HR practitioners. The session covered three main topics.

1. Mental Health Awareness

The COVID-19 pandemic threw the mental health challenges faced by many Americans into sharp relief. Mr. Cohen encouraged empathy and understanding in supporting employees who face these challenges. From a regulatory perspective, he noted that:

- Mental illness can be a disability under the ADA, and/or related state and local laws, depending on facts and circumstances, and that
- Mental illness is common, undertreated, and underreported.

Employers who do not address this issue head-on are likely to face increased attrition and sick leave usage. Further, employers who demonstrate that they care about mental health are twice as likely to retain employees than those who do not. Not only does adequate mental health support improve retention, but it also improves employee performance and satisfaction. Employers can proactively support their employees’ mental health by:

- Sharing their mental health philosophy companywide,
- Acknowledging that it’s ok to disclose mental health challenges,
- Explaining benefits available for dealing with mental health concerns, and
- Providing leaders and HR staff with mental health first aid training

2. Diversity, Equity, and Inclusion

DEI initiatives are on every HR practitioner’s mind these days, but few employers are evaluating how effective their programs are. The business case for DEI initiatives has never been stronger—not only do they enhance recruitment and retention, but many organizations will not partner or work with organizations that have not expressly prioritized DEI work.

Mr. Cohen cautioned strongly against making hiring decisions based on biased conclusions. Examples of implicit bias in hiring decisions may include:

- A hiring manager referring to their “personal comfort level” with a candidate as part of a hiring process—this may reveal affinity or “like me” bias.
- Referring to a candidate as being a “bad cultural fit”—this could also reveal affinity bias.
- Describing a candidate as “overqualified” or “too assertive,” which can be code for age and sex discrimination, respectively.
- Concerns about a candidate’s accent or appearance.
- Not wanting to hire a candidate based on “client preferences.”



Hiring processes should be as uniform as possible to eliminate bias, starting with a set of questions that every candidate is asked. Hiring managers should give weight to diversity of experience and ideas. This will improve an organization's diversity overall, and it is well documented that a candidate's credentials are less predictive of their likely success in a role compared to, for example, their responses to targeted, relevant, behavioral interview questions.

3. Drug Use and Testing

To round out his presentation, Mr. Cohen outlined rules of thumb for dealing with suspected drug abuse in the workplace. He noted that employers can take adverse action against an employee who is known to be using illegal drugs, known to be using prescription drugs not prescribed to them, and/or be unfit for duty because of use of drugs or alcohol. However, if an employee is addicted to a drug that has been prescribed to them, that can be a disability under the ADA and/or related state and local laws.

Mr. Cohen said that if an employer believes that an employee is under the influence of drugs, they should err on the side of not asking the employee to take a drug test. The reason is that as soon as an employer takes that step (even if in conjunction with the employer's stated policy), the employer may be perceiving the employee as addicted to drugs, which could create additional obligations for the employer under the ADA. Instead, if an employee's behavior has changed at work in a way that could be related to drug use, employers should focus on addressing employees' failure to meet stated performance standards, if any. Removing actual or suspected drug use from the equation is simpler, ensures a more streamlined approach, and is fairer to employees.

About the Author

[Katie Calabrese](#) is the head of talent management at Security Risk Advisors, a boutique cybersecurity consulting firm. She started her career as an attorney before transitioning into Human Resources. Katie has extensive experience in the professional services industry, having worked for two different AmLaw 100 law firms. Katie is also a member of Philly SHRM's Thought Leadership Team.

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