

## 5 Ways Not To Run Your Business Like a Pro Football Team

by Dennis J. Merley - Thursday, September 07, 2017



With the end of the State Fair and the beginning of school, many of us turn our attention to the next big annual event – the start of the season for the Minnesota Vikings and the National Football League (NFL).

The NFL is an astonishingly successful business enterprise that seems to make money for everybody connected with it. A shrewd employer might therefore be tempted to borrow a few items from the NFL playbook in regard to effective workforce management. Before you do, however, bear in mind that the NFL is a very unique sort of business and that some of their employment practices are best left on the sidelines in the everyday working world.

### 1. “We’re Going With a Younger Player”

We hear this quite often during training camp as well as toward the end of a team’s difficult

season. In a physically demanding sport like football, a player's skills have a finite life span and will begin to erode sooner or later. Why not turn your attention to a younger player who has more years to give to the team rather than ride with an aging veteran for another season or two?

Outside of football (and other professional team sports), this obviously is not a viable basis for employment action. **Federal** and **state** age discrimination laws would certainly prevent an employer from deciding, strictly on the basis of age, to replace an older worker with a younger one just because they "can get more years out of him."

What about when teams decide to cut a veteran player from the squad because they make more money than the younger, cheaper player? In the non-sports environment, deciding which employees to fire simply on the basis of how much money they earn is likely to have a disproportionate impact on older workers. Creating this impact without a business necessity can be viewed as illegally discriminatory.

#### **2. "He's hurt (or he's injury-prone) so we cut him"**

This is permitted under NFL rules but in the real world, definitely not. Employers with 15 or more employees are obligated to consider reasonable accommodations to assist injured employees in performing the essential functions of their jobs, while employers of 50 or more generally are required to offer Family and Medical Leave Act (FMLA) leaves for employees too injured to work. Of course, there is also the issue of workers compensation for work-related injuries.

Interestingly, the NFL has their own rules on dealing with injured players. Teams must offer **injury settlements** to players who are cut due to injury. In such cases, the team and the player try to come to agreement as to how many weeks the employee would miss as a result of the injury and the team then pays the player his contractual salary for those weeks.

#### **3. "The season is a lost cause so let's just tank the remainder of our games for a better draft choice next season"**

This is not something you will hear an NFL team (or a team in any other professional sport) say out loud but general consensus is that this happens all the time. With revenue sharing from massive television contracts, teams in the NFL generally will make money whether they win or lose. As a result, a team can decide to try less hard as the season wears on to improve their position in next year's player draft, all without fear of incurring financial ramifications.

Can you imagine any other business telling their employees "Since things aren't going very well for us, you might as well just kick back until the next fiscal year rolls around"?

#### **4. "That's just what happens in a locker room"**

The phrase "locker room talk" was much discussed during the presidential election campaign as a catch phrase for the rough-and-tumble environment that exists in many sports locker

rooms. Locker rooms often are said to be hotbeds of trash talk, horseplay, hazing and other similar pursuits, much of which seems to encompass a focus on race, ethnicity, sexual orientation and other personal characteristics. This supposedly fosters “team building.”

Perhaps, but in an ordinary workplace outside the realm of professional sports, such behavior is completely unacceptable. As we wrote last year in “*Slamming the Door on Locker Room Talk*”, federal and state discrimination law prohibit harassment based on protected classifications (e.g. race, gender, religion, sex, etc.). Harassment is defined as verbal or physical attention to an employee’s legally protected classifications when:

- enduring the offensive conduct becomes a condition of continued employment, or
- the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

The law makes it clear that even if you maintain locker rooms in your work environment. you should do everything you can to prohibit locker room talk at work and to address effectively if it occurs.

## **5. “Play with Pain”**

This phrase has been a part of the football lexicon for decades as players were encouraged to show their toughness. Clearly, football is a very physical game and the players can be expected to endure a fair amount of discomfort from playing it. However, this phrase has begun to be a rallying point of sorts for those who question the value of an activity that may cause permanent brain injury and debilitation.

While the debate about football and safety continues, there should be no debate in the ordinary work environment that employees should not be directed to perform beyond their physical capabilities. Employees who insist on coming to work even though they have a cold or the flu risk spreading the ailment to their co-workers. Those who work beyond their medical restrictions threaten their own safety and that of everyone working around them.

In addition, employers who insist that employees should ignore their medical concerns run the risk of being charged with interference with FMLA rights or failure to accommodate, and perhaps could be viewed as hostile to an employee with legally recognized disabilities.

No doubt, there are plenty of employees who call in sick with only the mildest of ailments, and some who do so without any ailments at all. Those employees certainly should be encouraged to “play with pain”, be it real or imagined. For everyone else, this phrase seems out of place, as even those in the football industry are beginning to recognize.

## **Bottom Line**

Sports have a unique place in American culture and we are right to treat them that way. It therefore is probably best to leave the football jargon on the field and utilize some different

practices when we return to work on Monday.

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220 South 6th St, Suite 2200, Minneapolis, Minnesota 55402 612-339-6321 | 800-989-6321