

3 Tips Private Employers Can Glean From Cuomo's Implosion

By **Anne Cullen**

Law360 (August 11, 2021, 8:46 PM EDT) -- While much of the pressure that pushed New York Gov. Andrew Cuomo to resign stemmed from his role as an elected and highly visible public official, experts say there are lessons that private sector leaders can learn from the mistakes that led to the Democrat's downfall.

Last week's **damning investigative report** from New York's attorney general verifying the accounts of nearly a dozen women who accused the governor of sexual harassment made clear that his administration had a culture problem that allowed the issues to fester for years.

The report concluded that the environment in the state's executive office was "filled with fear and intimidation" while simultaneously "normalizing the governor's frequent flirtations and gender-based comments," which together "contributed to the conditions that allowed the sexual harassment to occur and persist."

Employment experts say the kind of toxic workplace culture that enabled Cuomo isn't isolated to the public sector, and it's something private employers should be worried about too.

Speaking generally about malfeasance at the highest rungs of a private company, McDermott Will & Emery LLP partner Maria C. Rodriguez said the culture surrounding a bad actor can be extremely damaging to a business in myriad ways.

"When a person is that toxic to their environment, it affects the entire organization," Rodriguez said, because it hurts not only the affected employees but also the company's marketability and reputation.

Here are three tips for leaders in the private sector to ensure the members of their own upper echelons are being held accountable for any misconduct.

Establish a Strong, Neutral Arbiter

When the bad actor is a powerful figure in an organization, experts say this person and those in their orbit will have the ability to quash complaints unless the company has a strong human resources division or another type of overseer to get after the problem.

"You start by having credible people within the organization who can be a point person for these kinds of problems, and that person then has to have the authority and the will to pursue problems that come to them," said Brenda Feis of Feis Goldy LLP, a boutique firm that represents employees, managers and executives.

Feis, who served on the U.S. Equal Employment Opportunity Commission's 2016 task force on workplace harassment, emphasized that empowering an outside overseer — like a board of directors, perhaps — to investigate allegations against executives is a good idea. Having a well-funded, well-trained human resources squad is smart too, she said.

These teams need to have enforcement power, she added, as Feis said that rules without consequences won't do much. "It's not a matter of drafting the right policies, it's a matter of enforcing the policies," she said.

One way to empower human resources to tackle any issues arising in the upper echelons of a company is to make sure they have a representative in those upper rungs, according to Arent Fox LLP partner Valerie Samuels.

"HR needs to be represented at the highest level of the company," Samuels said. "So for example, at the executive level, they need a seat at the table."

And keeping these resources neutral is necessary to ensure that those who come forward with concerns are protected from retaliation, Feis added.

"To protect the people who may be willing to hold their bosses accountable, you have to create neutral overseers who will be your checks and balances," she said.

Revamp Training and Get Executives Involved

Bare-bones anti-harassment training isn't going to do much in the way of correcting a systemic, cultural problem at the company's highest levels, experts said.

"It can't just be about training to avoid legal liability," said Stephen Dwyer, senior vice president and chief legal and operating officer at the trade group the American Staffing Association. "That should be the floor of your training."

Dwyer, who was also a member of the EEOC's 2016 anti-harassment task force, said there are several ways that private employers can enhance their anti-harassment seminars to actually root out issues in the top tiers of their business. One is to include bystander training, another is to ensure executives have to participate, too.

"Training also should entail not just responsibilities as what should you do if you've been harassed, but also bystander training, what should you do if you witness harassment," Dwyer said. "If you're a bystander, you should be trained on how to speak up, your obligation to speak up, and the ramifications, or more importantly, the lack thereof if you speak up."

As for getting the C-suite involved, Dwyer said high-ranking officers shouldn't always be leading these types of seminars, but they should be listening sometimes, too.

"With respect to any training or any focus group where there are tough conversations being had with respect to company culture, those top executives need to be part of that," Dwyer said. "They don't need to necessarily lead those conversations, they need to listen."

If executives are given a free pass to skip the seminars, they may be more likely to engage in misconduct, he said.

"To the extent that executives do not participate in those focus groups, do not participate in the training, do not have those hard conversations, they are much less likely to engage in proper behavior," Dwyer said.

Dole Consequences Evenly

Experts across the board emphasized the importance of having everyone at the company, regardless of title or the money they may bring into the business, face repercussions for breaking company rules. Otherwise, they said, bad actors' behavior will get worse.

"If there are no consequences, the bad behavior will grow," said McDermott's Rodriguez. "It won't just remain, it will grow."

Individuals committing misconduct shouldn't be given a free pass just because they're high up in the organization or because they may be doing well in their job otherwise, said Dwyer of the American Staffing Association.

"At times, some organizations may ignore — or at least tolerate to a greater extent — bad behavior

by star performers, whether it's a salesperson who is bringing in a lot of revenue or whether it's a top executive," Dwyer said. "That can't be the case."

"The organization has to ensure anyone that is engaging in this bad behavior has consequences," he said.

When organizations selectively enforce their anti-harassment policies depending on who is behind the misconduct, employees lose faith in the process and don't report, further weakening the program, said Feis of Feis Goldy.

For the system to work, she said, "the employees need to believe that the system works." This means an investigative process that is fair, consequences for bad actors and no retaliation against the complainant, she said.

--Additional reporting by Jack Queen. Editing by Haylee Pearl.