



LANGUAGE AND COMMUNICATION:

Their Impact on Employment Practices

February 2024



Language and Communications: Their Impact on Employment Practices

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Introduction

Municipal employees work daily to serve their communities, which involves ample communication and collaboration. Public entities and school leadership make daily decisions on a range of workplace issues, especially within the culture of their work environment. Nowadays, employees have several ways to communicate with each other – through verbal language, email, text messages, and social media. The language we use in the workplace can lead to potential claims of discrimination, employment practices liability (EPL), and other indirect costs.

Language plays a crucial role in EPL by shaping communication within the workplace. Face-to-face conversations include body language and facial expressions that impact how a message is conveyed and interpreted. Technology has also impacted communication methods, as a lot can be said through the simple use of emojis in an email or a text message. A workplace culture in which inappropriate language, profanity, or abusive language is the norm may create considerable risk that can damage the municipality's reputation and create liability. This can occur due to the actions of the entity or due to the actions of an entity's employee(s). Beyond the potential legal risks and fees, the use of vulgar, harmful language may directly impact productivity and employee turnover and lead to potential violence.

Public entities are responsible for providing an appropriate and safe working environment for their employees, which includes taking the necessary steps to minimize the risk of using offensive and inappropriate language in the workplace. Using clear and inclusive language in the workplace can help mitigate the risk of EPL claims for municipalities and school districts. The purpose of this white paper is to clearly demonstrate the elements and methods of communication, address the many exposures associated with allowing a culture of inappropriate language in the workplace, and provide recommendations for employers on how to mitigate potential liability caused by inappropriate language.

Elements of Communication

Communicating amongst colleagues is more than just the words being said, as body language and the tone of voice can create additional layers of meaning, thus providing a more comprehensive understanding of messages. The 7-38-55 rule,



developed by psychology professor Albert Mehrabian at the University of California, concerns the communication of emotions through face-to-face conversations.¹ The rule states that communication is:

- 7% spoken word
- 38% tone and voice
- 55% body language

Dr. Mehrabian's study concluded that 93% of communication is "nonverbal" in nature. How a message is delivered significantly affects how it is perceived and understood. For example, if an individual is asked how they are doing, and they reply with, "I'm fine!" in an angry tone, others are more likely to believe the nonverbal message than the words alone. This is why becoming aware of nonverbal cues is especially important in the workplace.

How a message is delivered significantly affects how it is perceived and understood.

Body Language

Body language plays a vital role in communication in the workplace, as it can alter how individuals are perceived and understood and how their messages may be interpreted. Body language includes eye contact, gestures, facial expressions, and other physical cues that convey additional information beyond words. An employee may say something completely innocent. However, the way an employee receives and interprets body language may paint a different picture of what an individual is trying to express.

In collaborative environments, employees rely on nonverbal cues to understand the atmosphere. Positive body language, such as welcoming gestures, fosters cooperation and teamwork and, as a result, creates a harmonious work environment. Positive body language contributes to

building trust and rapport among colleagues, and maintaining open and engaged body language can make a comfortable and trusting work environment.

Body language also includes body posture, which can project authority, confidence, and approachability, but it can also instill fear or intimidation. Body language can ease or escalate tension between the parties involved during conflict or challenging conversations. Physical distance between individuals can also set the tone for the conversation. Being extraordinarily close or touching someone could be considered intrusive or hostile. Imagine having a difficult conversation about an employee's behavior. Facial expressions, posture, and gestures can transform your delivery.

Voice

Voice and tone are critical elements of communication that influence how messages are received and interpreted, especially during interpersonal interactions.² Pronunciation and the appropriate pacing of words contribute to how a message may be understood, and tone allows individuals to express their emotions appropriately. For example, a positive and engaging tone can make messages more appealing and memorable and convey excitement or happiness. A harsh or sarcastic tone can express annoyance/frustration or create hostility.

Maintaining a respectful and polite tone is vital in a professional setting. It contributes to a positive work environment and encourages healthy relationships among colleagues. Often, employees must learn to adapt their voice and tone to the nature of the conversation.

Certain situations may require a more formal, assertive approach, while others may benefit from a friendly and helpful tone. It is essential to highlight that voice and tone are about the words spoken and how they are interpreted. How an individual responds to a message can convey information about how they have understood the message. Messages may be delivered with a playful and humorous tone, yet an individual might respond using an assertive, serious tone. For this reason, recognizing how a message may have been received through an

¹ <https://online.utpb.edu/about-us/articles/communication/how-much-of-communication-is-nonverbal/>

² <https://harappa.education/harappa-diaries/tone-of-voice-types-and-examples-in-communication/>



individual's tone in their response can provide insight into how the message was interpreted.

Words

Words are a fundamental and versatile element of communication and serve as language's building blocks. The words used in a message are crucial in conveying meaning, expressing thoughts, and facilitating effective communication among individuals. Words have denotative and connotative meanings. The denotation is the dictionary definition, while the connotation involves the emotional or cultural associations attached to a word. Understanding both aspects is especially vital for effective communication in the workplace.

Language is dynamic, and words can evolve. As new words emerge, others may change in meaning, fall out of use, or impact the audience's emotional response. Words carry cultural significance and reflect a society's values, beliefs, and norms. Though every word has a precise meaning, their cultural or societal definition may be more ambiguous or have different interpretations, leading to misunderstandings or liability. The context in which words are used can take on different nuances and interpretations based on the situation, tone, or cultural background.

Inappropriate or discriminatory language can contribute to a hostile work environment. This includes comments related to race, gender, age, religion, disability, or other protected classes. Jokes, inappropriate remarks, or advances of a sexual nature may be considered sexual harassment. False statements, whether spoken or written, that harm an

individual's reputation can lead to defamation claims. Words are central to communication, and effective use involves considering their semantic content, contexts, and the dynamics of language.

Methods of Communication

Effective communication is the cornerstone of successful relationships, collaboration, and problem-solving. Municipal and educational leaders can foster understanding, build trust, and achieve their goals by choosing the proper methods of communication within the workplace. Methods of communication are the various forms that individuals use to exchange information, ideas, and messages. The nature of the message, the audience, and the context can help determine the methods of communication to convey a message effectively.

Verbal Communication

Verbal communication occurs when we engage in speaking with others. This includes face-to-face conversations, telephone conversations, or video conferencing applications, such as Webex.³ Verbal communication arranges words meaningfully and structured to convey a message. Some engagements are informal, such as speaking with an employee or a colleague over coffee in the morning. Other conversations, such as a scheduled meeting, can be considered formal. Regardless of the type, words are essential when communicating face-to-face, as they cannot be separated from non-verbal communication.

³ <https://drexel.edu/graduatecollege/professional-development/blog/2018/July/Five-types-of-communication/>

Non-Verbal Communication

Moreover, non-verbal communication provides a more significant message than the actual words. Non-verbal communication includes body language such as facial expressions, eye contact, posture, and other physical cues that convey messages without using words. Non-verbal communication is spontaneous and less structured, using spatial relationships and physical signals to convey a message⁴. A colleague may agree with an idea, but they may indicate a different message if they avoid eye contact and scrunch up their face. Sign language is also considered non-verbal communication for individuals with hearing impairments using hand movements, facial expressions, and body language.

Written Communication

Written communication includes electronic messages exchanged through email, text messages, or messaging apps and formal written communication, through a memo, for example. All forms of written communication aim to disseminate information clearly and concisely. The most significant benefit of written communication is that it provides a quick and easy way for employees to communicate with each other in different locations. It also provides the ability to record what was said and agreed upon, such as a specific date and time to meet with a colleague.

While written communication offers numerous benefits, it has potential risks and liabilities. One thing to consider when it comes to written communication is that it is a permanent means of communication.⁵ Nowadays, text messages and emails can be stored on a cloud-based server, for example, and act as a permanent record. Consequently, it is crucial to ensure the content of the message is appropriate and does not produce liabilities. Secondly, the absence of non-verbal cues can lead to misunderstandings and misinterpretations. Written messages may be perceived differently than intended without body language and tone.

Digital Communication

Digital communication is the electronic exchange of information and technically represents written communication. It has become the standard for individuals and takes many forms. For this whitepaper, social media and emojis will be the focus of digital communication.

Employees often connect on social media, which allows employees to build stronger relationships with coworkers and fosters a sense of camaraderie. Combining social media provides an additional channel for communication, making it easier to share updates, but it also allows for the misuse of social media. The ease of contact often leads people to make impulsive comments and creates a lack of filter, inviting informal and, often, inappropriate conver-

⁴ <https://health.mo.gov/living/families/hvcqigateway/pdf/communication101.pdf>

⁵ <https://drexel.edu/graduatecollege/professional-development/blog/2018/July/Five-types-of-communication/>





sations. Misusing social media includes engaging in discrimination, harassment, disclosing proprietary information, and much more.

Linguistically, emojis represent facial expressions, an entity, or a concept.⁶ Emojis have infiltrated our everyday conversations. They are typically used to add emotional nuance to digital or written communication, but their use can create liability in surprising ways. Often, individuals believe that they will not be held liable for the emojis they use. Emojis are similar to the words and statements used in the workplace. Emojis are subjective, and their meaning can be interpreted differently among individuals. They could be perceived as conveying discriminatory, degrading, or harassing messages, especially if they are paired with offensive language (words) or content.⁷ If an emoji is misinterpreted and causes confusion, it could contribute to a hostile or offensive environment and lead to liability in the workplace.

How Language Can Lead to Liability

Employment Practices Liability (EPL) claims are on the rise in Connecticut and can often lead to operational interruptions and costly claims. They continue to be influenced by forces that are driven by society and culture. For example, during the pandemic, virtual meetings embraced a very casual (and comfortable) environment; instead of suits and ties, employees are more inclined to wear jeans and a polo shirt instead of traditional office attire. This is an indicator of how the pandemic shifted the standards of professionalism. In the same way, language, culture, and communication are adapted within workplace environments across the country.

Both spoken and written language can lead to legal liability in various ways. Every work environment is made up of physical and emotional elements that have the potential to affect day-to-day productivity, including the language that is allowed within the workplace. Using inappropriate or discriminatory language can contribute to legal liability,

⁶ [https://www.techtarget.com/whatis/definition/emoji#:~:text=An%20emoji%20is%20a%20small,other%20possibilities\)%20in%20digital%20communications](https://www.techtarget.com/whatis/definition/emoji#:~:text=An%20emoji%20is%20a%20small,other%20possibilities)%20in%20digital%20communications)

⁷ <https://www.talksonlaw.com/briefs/can-you-be-liable-for-the-emojis-you-use>

and employers should consider their response to this kind of language used by their employees, carefully.

Employment Practices Liability Insurance protects municipalities and school districts in case of an employment-related claim. Unfortunately, it does not provide a line of defense for a municipality's reputation or morale. If pervasive and tolerated in the workplace, defamatory or discriminatory language can create a hostile work environment that carries legal liability under anti-discriminatory laws. The words used in the workplace that contribute to a culture of hostility or emotional distress may result in legal claims against municipalities or school districts if they are not adequately addressed.

CIRMA has seen an increase in discrimination claims that involve the use of vulgar or profane language in the workplace. Feelings are not universal; often, what is said and how it is spoken can be misconstrued. The derogatory language that would be tolerated within the camaraderie of a team, for example, could be considered degrading and offensive to an individual in the workplace. It is important to note that even if offensive comments are not personally addressed to an employee, that employee may still suffer emotional distress, resulting in an EPL claim due to creating a hostile work environment.

False or misleading statements and defamatory language, intentional or unintentional, can also result in legal consequences.

Within The Workplace

Language in the workplace can create liability, often stemming from miscommunication, ambiguity, or inappropriate use. False or misleading statements and defamatory language, intentional or unintentional, can also result in legal consequences. However, what is said and how it is said can make all the difference.

The use of inappropriate language, such as discriminatory or harassing comments, can directly contribute to the creation of a hostile work environment. Discriminatory

language within the workplace refers to the use of language that marginalizes individuals or groups based on characteristics such as race, gender, age, religion, sexual orientation, disability, or other protected classes.⁸ Allowing this type of language within the workplace is inappropriate, creates a hostile work environment, and contributes to discrimination.

Aspects of discriminatory language at work include verbal harassment, which involves derogatory comments, slurs, or offensive jokes that target protected classes. Microaggressions are defined as subtle expressions of discrimination.⁹ They are typically aimed at traditionally marginalized identity groups and are hurtful actions that can happen to any individual of any background. Microaggressions are based on a simple idea (Harvard Business Review)(HBR):

"Because you are X, you probably are/are not or like/don't like Y."

According to HBR, research indicates that microaggressions, even if they seem innocuous, can take a toll on an individual's physical and mental health. Microaggressions and inappropriate jokes or comments appear to be contributing to increased rates of depression, trauma, and physical concerns, including high blood pressure among employees. Regardless of type, discriminatory language can also extend to social media and appear in written communication. This can cause significant liability for school and municipal leadership. These mediums can cause severe consequences and may be used as evidence in legal cases.

Employers are expected to create and maintain a workplace environment free of sexual harassment, which can arise in several unique forms. Sexual harassment appears in two distinct forms: *quid pro quo* and hostile work environment. *Quid pro quo* sexual harassment occurs when discernable employment actions are taken against employees who do not comply with sexual demands. Another form of sexual harassment is the creation of a *hostile work environment*, which creates an intimidating and oppressive atmosphere in the workplace or interferes with an employee's ability to do their job. The following are examples of *hostile work environment* sexual harassment:

⁸ <https://www.eeoc.gov/youth/what-employment-discrimination>

⁹ <https://hbr.org/2022/05/recognizing-and-responding-to-microaggressions-at-work>



- Individuals commenting about employees' bodies
- Individuals talking about sex in the workplace
- The presence of posters with scantily dressed models in the workplace
- Individuals touching coworkers without their consent

Employers can be held liable if they fail to address such behavior or if it is pervasive in the workplace. *Reeves v. C.H. Robinson Worldwide, Inc.* (2008),¹⁰ found that the plaintiff demonstrated how the consistent use of derogatory language about females created a hostile work environment, ultimately affecting the plaintiff's work performance.

Meritor Savings Bank v. Vinson (1986),¹¹ found that "even a woman who was never herself the object of harassment might have a sexual harassment claim if she were forced to work in an atmosphere in which such harassment was pervasive." For example, if an employer makes comments that humiliate and degrade women in general, a female employee may have the grounds for a successful claim. Employers and coworkers may violate the law or departmental policy if they use language that degrades a legally protected group. As previously stated, this language does not need to refer to an individual. Instead, it can be partic-

ularly humiliating to a protected group to which the victim belongs.

Conduct unbecoming is any behavior that an employer believes negatively affects your work. It is a non-specific charge that sometimes has potent legal implications for governmental employees. These charges cover a wide range of possible behaviors that justify disciplinary actions. In 1997, *Crouse v. Department of the Treasury*¹² upheld a conduct unbecoming charge against an employee who spoke to a subordinate in a physically intimidating and threatening way. This case demonstrates the power of body language and tone. Body language provides insight into a person's emotional state and separates perception from reality. In this case, the way a message was delivered and interpreted held more value than what was verbally stated.

The law does not require all workplace interactions to be considerate or polite but does protect certain groups from discrimination. In its decision of *Reeves v. C.H. Robinson Worldwide, Inc.* (2008), the court stated, "Title VII is not a civility code, and not all profane or sexual language or conduct will constitute discrimination in the terms and conditions of employment." Essentially, insensitive, offensive, or rude language in the workplace may not necessarily violate the law.

¹⁰ <https://www.eeoc.gov/litigation/briefs/reeves-v-ch-robinson-worldwide-inc>

¹¹ <https://www.loc.gov/item/usrep477057/>

¹² https://www.mspb.gov/decisions/precedential/CROUSE_STUART_A_SF_0752_94_0781_R_1_OPINION_AND_ORDER_247373.pdf

Outside Of The Workplace

It is important to note that derogatory or discriminatory language used outside the workplace (through online accounts and social media) can create Employment Practices Liability claims. On May 19, 2015, Connecticut enacted an employee online privacy law that addresses what employers can and cannot do regarding censoring – Public Act No. 15-6¹³, titled “An Act Concerning Employee Online Privacy.” The act applies to employees and job applicants and prohibits employers from the following:

- Requiring or requesting employees or applicants to provide the employer with a username, password, or other means to access the employee’s or applicant’s online account (including e-mail, social media, and retail-based websites);
- Requiring or requesting employees or applicants to authenticate or access a personal online account in the presence of the employer’s representative;
- Requiring employees or applicants to invite or accept an invitation from the employer to join a group affiliated with any personal online account.

The act does not transform personal online accounts into an absolute zone of privacy. Employers can investigate personal online accounts with specific limitations and under certain circumstances. The following are instances that would permit an employer to conduct an inquiry involving an employee’s online account:

1. If the employer were to receive specific information about activity on an employee’s or applicant’s account to ensure compliance with
 - a. applicable federal or state laws;
 - b. regulatory requirements;
 - c. prohibitions against work-related employee misconduct;
2. If the employer were to receive specific information about an employee’s or applicant’s unauthorized transfer of the employer’s confidential information or financial data to or from a personal online account by an employee, applicant, or other source.



¹³ <https://www.eeoc.gov/litigation/briefs/reeves-v-ch-robinson-worldwide-inc>

Under these exceptions, an employer cannot require the disclosure of the employee's or applicant's username, password, or other means of accessing a personal online account. They may, however, require the employee or applicant to privately access an online personal account and provide the content to the employer. An online report can be an individual's e-mail or social media account. Employers may face potential liability if derogatory terms and language are exchanged through texts or emails, target a protected class, and impede an employee's ability to do their job.

Municipal employees and school leadership often use devices that their employer provides. It is important to note that Connecticut Public Act 15-6 permits employers to request or require an employee (or applicant) to access any account or service the employer has provided. The act also permits employers to request access to an employee's electronic device when it is supplied or paid for, in part or whole, by the employer. An electronic communication device includes any computer, computer network, or cellular telephone provided by the employer.



Connecticut Public Act 15-6 permits employers to request or require an employee (or applicant) to access any account or service the employer has provided. The act also permits employers to request access to an employee's electronic device when it is supplied or paid for, in part or whole, by the employer.



The question is whether such comments on social media can be considered inappropriate if they relate to a coworker, work, or management. The National Labor Relations Board has addressed this issue through several cases and, more likely than not, has concluded that the conduct was protected under Section 7 of the National Labor Relations

Act (NLRA)¹⁴ because it is directly related to working conditions, or because the comments were in support of another employee's criticism of management. In some circumstances, profanity is a protected activity under the NLRA. However, once an employee's ability to perform their job has been hindered due to verbal harassment based on sex, race, national origin, or another protected class, this activity is no longer protected, which puts your public entity at risk of a costly lawsuit.

Bellue v. East Baton Rouge Sheriff involved an employee taking her employer to court due to sexual harassment. The employee stated that a colleague sent her a message commenting on her appearance and used a winking emoji.¹⁵ The court decided that the message did not meet the threshold to be considered harassment. Still, cases like this are more prevalent because technology has become a primary method of communication. The courts have seen similar instances where employees receive heart or kissing emojis. While the courts ruled that these instances were not severe or pervasive enough to constitute sexual harassment, if there were several instances of these emojis being used, there might have been enough evidence for the ruling to go in the other direction.

Emojis have differing interpretations, making deciphering the sender's true intent challenging. Some emojis have multiple meanings or convey different emotions depending on the context of the conversation. In addition, different generations may have varying comfort levels with emojis in professional communication.¹⁶ Forbes found that members of Gen Z are reportedly offended by their colleagues' use of the smiley face emoji, and cultural differences can mean that an individual's friendly use of a smiley face emoji can be deemed offensive.



¹⁴ <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/interfering-with-employee-rights-section-7-8a1>

¹⁵ <https://www.talksonlaw.com/briefs/can-you-be-liable-for-the-emojis-you-use>

¹⁶ <https://www.forbes.com/sites/tomokoyokoi/2022/07/16/emojis-in-the-world-of-work/?sh=678db3a060d3>

How To Avoid Miscommunication

Communication is a dynamic, ever-evolving process that begins with conceptualizing ideas communicated through a channel to a receiver.¹⁷ Public entities are responsible for providing an appropriate and safe working environment, which includes taking the necessary steps to minimize the risk of inappropriate workplace language use. To mitigate the risk of misinterpretation, employers and their employees should be mindful of context when communicating. Clear and concise language can help ensure that messages are accurately conveyed without the potential for misinterpretation.

For communication to be effective, consider the following:¹⁸

- Who you are communicating with.
- What you are communicating. Is the message adequate in terms of context?
- Why are you communicating? What is the message that is being delivered? What is the goal of communication?
- When will a message be communicated?
- How will a message be communicated?
- What type of communication method is appropriate for the message?

Some words are worse than others, and only some individuals can agree on what those words are. It would be nearly impossible to create a list of forbidden words, tolerated comments, or specific situations where vulgar language would be interpreted as *funny* instead of offensive. Discriminatory language often depends on the listener. While some words and phrases may always be offensive to a protected class, there is always a debate over language that may not be overtly offensive to others. While employment-related lawsuits can arise at any given moment, municipalities should take the time to implement basic risk controls to be better equipped and avoid these kinds of claims altogether.



Several elements go into creating and maintaining a positive work climate within a public entity. As previously mentioned, it is the employer's responsibility to ensure their employees are not exposed to language that may be deemed inappropriate or offensive in the workplace. To ensure that communication allowed in the workplace is addressed effectively, employers should actively utilize and enforce their policies and procedures to maintain an appropriate environment at work.

If a public entity or school district fails to terminate or significantly discipline the employee, it would be remiss in its responsibilities for two reasons. First, the entity would appear irresponsible for allowing inappropriate conduct to potentially continue, in addition to creating a record of its failure to act. Second, the entity would create a dangerous precedent for future occurrences of potentially harassing behavior and gross insubordination.

In essence, policies protecting victims from bullying and harassment and the grievance procedure must have provisions for individuals who bring these issues to the employer's attention. This could also extend to anonymity if deemed appropriate, and a specific policy for protected disclosures should be ensured.

¹⁷ <https://open.lib.umn.edu/communication/chapter/1-3-communication-principles/#:~:text=The%20dynamic%20nature%20of%20communication,irreversible%2C%20and%20communication%20is%20unrepeatable>

¹⁸ <https://health.mo.gov/living/families/hvcqigateway/pdf/communication101.pdf>

Policy regarding inappropriate/offensive language in the workplace should address the following considerations:¹⁹

- Consider being proactive by creating and enforcing policies that address the appropriate use of language in professional settings (i.e., equal opportunities, protection from bullying and harassment, grievance procedures, etc.)
- Ensure that individuals who bring forward a complaint about using offensive language in the workplace know they are protected from bullying, harassment, retaliation, and victimization.
- Consider minimizing the risk of offensive language in the workplace by providing annual diversity and equity training for all employees. Consider providing training on proper digital communication etiquette, including the use of emojis and potential implications.²⁰
- Ensure that employees in supervisory positions are trained regularly to address issues concerning the use of harmful language in the workplace, including that they are well aware and understand the relevant policies and procedures.

- Ensure that employees appointed to investigate complaints of harassment and discrimination, particularly regarding language in the workplace, are trained in conducting a fair and thorough investigation.

Implementing a framework of policies and procedures to address equal opportunities policy, protection from harassment and retaliation, and a comprehensive and accessible grievance procedure is vital to minimizing liability in the workplace. This proves that an employer has taken measures to create and maintain a positive, safe work environment free of discriminatory language. Providing diversity training to all staff ensures awareness of cultural bias and discriminatory practices, which could discourage using discourteous language in the workplace. Enforcing a unique Code of Conduct and Ethics provides a set of standards, values, and principles outlining the employer's and employees' expected behavior within an organization.

¹⁹ <https://www.xperthr.co.uk/commentary-and-insights/policy-clinic-offensive-language-in-the-workplace/90468/>

²⁰ <https://health.mo.gov/living/families/hvcqigateway/pdf/communication101.pdf>



Notes



About CIRMA

CIRMA was established as a Connecticut Conference of Municipalities (CCM) service program—Connecticut’s association of towns and cities. Today, CIRMA is Connecticut’s number-one municipal risk financing and risk management services provider for Connecticut’s public entities. A member-owned and governed agency, CIRMA provides high-quality, tailored insurance for municipalities, school districts, and local public agencies. CIRMA operates competitive Workers’ Compensation and Liability-Auto-Property pools and provides holistic claims services and risk management solutions exclusively to the Connecticut public sector.



Connecticut Interlocal Risk Management Agency
545 Long Wharf Drive, 8th Floor, New Haven, CT 06511