

A NEW LINE OF DEFENSE:

Before Firing an Employee, Some Attorneys Are Recommending Coaches



By Catherine Ho
The Los Angeles Daily Journal Staff Writer

Two years ago, Rutan & Tucker employment lawyer Mark Budensiek got a call from a client, a national food and beverage distributor on the verge of firing a valuable but troublesome chief financial officer.

"The first call was the CEO saying, 'I'm thinking about firing this guy, what do we do next?'" said Budensiek, a partner in the firm's Costa Mesa office.

Instead of advising him on how to terminate the executive, Budensiek floated an alternative that a small but growing number of employment lawyers are nudging their clients toward: a third-party coach, paid to work with the employee for 90 days on improving his management style. Executive coach Peter Leets spent days doing "360 interviews" with 10 of the CFO's managers, peers and subordinates to identify the root of their discontent.

"I presented him with that feedback anonymously and he was able to see and hear exactly how people were viewing his performance," said Leets, president of The Leets Consortium in Newport Beach who also coaches partners in law firms on similar workplace issues. "Once he accepted that's the way people were perceiving him, he quickly took steps to change those behaviors."

The discord easily could have snowballed in another direction, said Budensiek, who has recommended coaches to several large clients. For example, the CEO could have fired the CFO, who could have then snagged a plaintiffs lawyer to sue the company for wrongful termination. "We'll never know if that would've happened or not, but what we do know is the company kept

a valued employee who appreciated the opportunity to have someone come in and work with them," he said. "At the end of the day, compared to the alternative, it cost a great deal less than dealing with an employment dispute."

In dollars and cents, the alternative approach could mean a company shells out \$20,000 to hire a coach, versus the \$200,000 they might have spent defending litigation.

They go by many names: executive coaches, therapists, counselors. Their backgrounds typically are in psychology, business or human resources, but rarely law. They are part of a decades-old field that is gaining new traction as a way for employment lawyers to keep their clients happy by nipping potential lawsuits in the bud.

Using therapists to smooth out employment conflicts before they escalate into legal action gives employers a layer of protection, said Pamela Marantz, an associate partner at Murchison & Cumming in Los Angeles who represents employers in discrimination and harassment claims. "The No. 1 goal is to keep all the employees, keep them productive, and keep everyone doing their jobs," said Marantz, who is head of the employment law practice at the firm's Los Angeles office and advises employers in hiring, promotion and discipline decisions. "The No. 2 benefit is that if it doesn't work out, the employer looks like a good guy coming into court. They can say, 'We terminated you, but we terminated you after counseling and trying to work it out.'" That approach is especially useful in employment law because most cases stem from a breakdown in a relationship, as opposed to a dispute over language in a contract, some lawyers said.

"The sweeping majority of employment law cases arise out of miscommunication or disagreement of values and expectations," said Karen Gabler, a partner at Nordman Cormany Hair & Compton in Oxnard who represents management in wrongful termination, discrimination and harassment. "Injecting that element of emotion, therapy or counseling in assisting a client through that process productively is a significant component that's been lost so far."

Firms that provide professional coaching say they have seen an uptick in business, particularly over the past two years, as employment claims in California rise and businesses seek to be more productive in a leaner economy.

Extti, Inc., a San Fernando Valley firm that offers workplace coaching, training as well as harassment and discrimination investigations, has seen the portion of their business dedicated to coaching clients skyrocket.

"It was nothing a few years ago," said Michael Robbins, founder. "I started this 12 years ago. We weren't doing any coaching whatsoever at that time."

Rosalinda O'Neill, president of CEO LifeMentor Inc., in Calabasas, has worked with employment lawyers for 30 years to coach and train their clients.

O'Neill, a licensed marriage, family and child therapist who also has a background in corporate business, said she's seen a "swifter call for action" by businesses over the last two years to intervene in workplace personnel conflicts.

"There's not that cushion where they can waste time and lose clients or have mistakes in production time," she said. "That affordability is gone."

Jonathan Light, a partner at Nordman Cormany Hair & Compton, has referred coaches including O'Neill to work with his clients for several years. While it's not a new phenomenon, Light said, he has noticed that employers recently have become more receptive to the strategy. "Maybe because people like me are becoming smarter about the options clients have," he said. "Is it more creative and successful to try that strategy than go by the book and put them on probation and if it doesn't work out, terminate them? I think it's the recognition of the expense and hidden costs in ramping up a new person."

Light cited a recent client in the agricultural industry who was considering firing two high-level managers who were butting heads.

"We talked it through and rather than putting them on probation, firing one or both of them, we brought in a business coach to work with both of them," he said. "It's \$5,000 to \$25,000 now, but in the long run, when you consider two guys making \$175,000 to \$250,000 a year and the cost of bringing in someone new and loss of productivity, this is a much better strategy if these guys are worth saving and have good skills."