

Preventing worst-case scenarios

The setting up of conflict management systems in practice

By Dr. Julia Schweitzer

Workplace conflicts are common in companies. Unresolved conflicts not only take up a lot of time, but also result in heavy costs for the companies concerned, and thus ultimately have an impact on a company's success.

Conflict costs may arise at various levels: For instance, if the people involved in the conflict dedicate some of their working hours to addressing the conflict and measures to mitigate the conflict instead of performing their professional tasks, this costs money. Other factors, too, such as a decline in productivity, the destruction of relationship capital and missed business opportunities, are serious cost items. Another important factor is that conflicts may permanently slow down the development of an entire organization and destroy its public image.

As a consequence, in many companies – alongside the traditional points of contact such as the works council or the human resources department – there already exists an ombudsperson as another

point of contact. Typically, an ombudsperson is used to fight corruption or any other breaches of laws or policies on the part of employees. In the meantime, this often happens within the framework of compliance management systems. To sum up, compliance and conflict management systems share the same objectives: Both are intended to prevent worst-case scenarios. As a result, it is more and more frequent that companies are implementing a comprehensive conflict management system.

What is conflict management?

The term conflict management is the generic term for the systematic handling of conflicts in companies and organizations. The overriding objective in this context is not having to react to a conflict in a given situation, or indeed spontaneously, but being able to recognize conflicts at an early stage and address their needs. The existence of a conflict management system has many positive effects, such as reducing the abovementioned conflict costs, supporting the willingness and →



An active and innovative conflict culture will have a positive impact on the company.

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ability to carry out cooperative conflict settlement and having conflicts resolved at a low level of escalation. Internal conflict management needs instruments. First of all, a conflict contact point should be implemented in the company. This can be a conflict management department, a human resources department, the works council, an external person of trust, the abovementioned ombudsperson as well as internal or external conflict guides. Other major components of conflict management systems are performance reviews, moderation, coaching, supervision or mediation.

Besides the existing hierarchical structure, personal needs, relationships on a professional level and emotional entanglements also play an important part in any workplace conflict. At this point, it is especially useful to use mediation. In principle, mediation by corporate mediators is only possible if the mediators are considered to be neutral and maintain sufficient distance from the conflict process. Pursuant to Section 1, paragraph 1 of the German Law on Mediation (*Mediationsgesetz, MediationsG*), mediation is a confidential and structured process in which the parties are striving, voluntarily and independently, for an amicable settlement of their conflict assisted by one or several mediators. Pursuant to Section

1, paragraph 2 *MediationsG*, the mediator is an independent and neutral person without any decision-making power who guides the parties through the mediation process. This is why, ordinarily, external mediators are used in the case of corporate mediations.

Phases of implementing a conflict management system

Certain stages have to be completed when introducing a conflict management system in order to be able to ensure its successful implementation:

Phase 1: Analysis of the existing concepts of conflict management

As a first step, you should carry out an evaluation of the current situation, e.g., an analysis of all legal disputes during a certain period of time, and use of the capacity of the legal department as well as determining possible areas and sources of conflict. At the same time, it will be necessary to examine existing specifications, collective wage agreements, collective bargaining agreements and guidelines of the respective company.

Phase 2: Creating acceptance of conflict management systems

It is only possible to create acceptance of conflict management systems throughout a company if these systems are openly supported by management. Company management should make declarations of principle, specifying and supporting the introduction of alternative methods of dispute resolution. If the employer intends to permanently implement conflict management systems and/or mediation in a company, the design of both will, as a matter of principle, be accompanied by a works council's right of codetermination (*Mitbestimmungsrecht des Betriebsrats*) pursuant to Section 87, paragraph 1, No. 1 of the Works Constitution Act (*Betriebsverfassungsgesetz, hereinafter referred to as BetrVG*). This is because – in the case of a conflict – the inclusion of such a system leads to the shaping of a company structure. Employees shall be obliged to use the in-house conflict management system. The extent to which this actually concerns matters of an enforceable right of codetermination pursuant to Section 87, paragraph 1 of the *BetrVG* depends on whether this measure falls within the scope of this provision. This may concern: Section 87, paragraph 1, No. 1 of the *BetrVG* (questions of in-house organiza-

tion and the conduct of the employees in the establishment, *Fragen der betrieblichen Ordnung und des Verhaltens der Arbeitnehmer*), Section 87, paragraph 1, No. 7 *BetrVG* (health protection, *Gesundheitsschutz*) and Section 87, paragraph 1, No. 8 *BetrVG* (the form, organization and administration of social services affecting the establishment, the company or the group, *Form, Ausgestaltung und*



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Verwaltung von Sozialeinrichtungen, deren Wirkungsbereich auf den Betrieb, das Unternehmen oder den Konzern beschränkt ist). When designing the conflict management system, it is important to involve the works council at an early stage as it will establish broad acceptance within the workforce if both management and the employee representative body support conflict management. It is important to communicate the expectations connected with a conflict management system to employees. Furthermore, the individuals responsible must be designated. At the same time, another incen- →

tive may be the creation of an incentive system for the use of alternative methods of dispute resolution. It is only possible to implement a conflict management system over the long term if the necessary structural, financial and organizational prerequisites are met by providing adequate in-house resources.

Phase 3: **Designing the conflict management system**

As a next step, the respective company must examine how the conflict management system is to be designed in the future. This requires a definition of the procedures to be applied in the future and their order on the basis of the regulation already in existence within the company. Often, external advisers will be involved in evaluating the current situation and designing the future conflict management. These external advisers must closely cooperate with the decision-makers in the company in order to create a system that works in practice. In this regard, the interfaces with marketing and both internal and external public relations are of prime importance in order to convey the system to the workforce and perhaps also to convey externally the positive effect of such a system for the company. This is very important with respect

to both corporate identity and addressing potential applicants for positions in the company. It may be sensible to integrate a conflict management department in the legal department in order to safeguard more efficient and cost-effective handling when having to deal with existing cases of conflict.

Phase 4: **The pilot phase**

The shaping of conflict management is followed by what is known as a pilot phase. This phase serves to test conflict management and reveal any shortcomings that will then be addressed. This practical test is absolutely essential. The pilot phase often shows that the distribution of roles (e.g., conflict adviser, ombudsperson or mediator) is not clearly defined. Such an unclear distribution of roles involves the risk that the people involved in the conflict cannot discern who is the right contact person for a given matter. At the same time, the consequences of establishing contact, in particular with respect to confidentiality, cannot be fathomed. If the proceedings are not sufficiently transparent, from the very start, employees will fail to make use of the offer of conflict management. For this reason, employee workshops explaining the new conflict management system

should be implemented no later than the pilot phase. If this leads to any ambiguities, it will still be possible to make the necessary readjustments.

Phase 5: **Implementation and further development of the conflict management system**

The implementation of the conflict management system follows the pilot phase. During the implementation of the system, it is important that continuous interface communication takes place between the various sections of the company and its employees. In order to be able to determine the actual quality of a conflict management system, continuous controlling and quality assurance management is of paramount importance. A conflict management system is not rigid, but rather a process of continued development and, in this fashion, can be of benefit to both the company and

its employees when having to deal with conflicts.

Conclusion

The implementation of successful and professional conflict management requires the inclusion of all relevant interfaces in a company. Several phases must be undergone during the implementation process and a conflict management system must always be further developed. An active and innovative conflict culture will have a positive impact on the company, both internally and externally. ←



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