

## Your Association, Generation Y and the Law

By Donald C. Collins



Generation Y, the Millennials, Echo Boomers, Generation Next. Call them what you want, but your officials association is going to have to deal with them. Indeed, you're probably doing so now – as this generation was born between 1978 and 2000. They're probably the youngest guys in your association; they may not have even crossed your radar yet, but they will.

For the past 15 years or so, you've seen kids with excessive tattoos, baggy pants and crazy hair styles. They may have a self-assurance somewhat out of proportion with their actual achievements. This isn't a generalization. They've been shuttled around to athletic contests, school and other events by their parents and received a degree of attention in their formative years that other generations didn't get. And yes, they're extremely tech-savvy and they communicate a lot; indeed, they may appear to have Bluetooths glued to their ear and juggle Twitter, Facebook and other electronic tools to an extent that may surprise association leaders.

This generation presents some legal issues. The speed of communication in the modern world could turn some of the legal issues into public relations issues. However, like all issues, this generation's issues can be dealt with.

Remember, we've been through this before. Flower children from the '60s became officials. So did silk shirt-wearing, long-haired, leisure suit-wearing kids from the '70s. Officiating survived them – and it will survive this Generation. Officiating may even get better as some of the traits of this generation are being team-oriented and multitasking. Let's cover the legal implications of some of the challenges posed by Generation Y. To do so, we have to balance some legal rules.

Generation Y issues are mostly appearance and style of work issues. Appearance and style of work issues are not protected under federal employment law. They probably also aren't protected in most states.

Federal employment law prohibits discrimination based on race, religion, color, gender, age and national origin. Anti-discrimination laws clearly make it illegal to treat these protected groups differently than others, which is called disparate treatment. These discrimination prohibitions also extend to acts that appear neutral but have a disparate impact on the groups that are protected from discrimination – unless there's a business justification for the neutral action. In other words, I can't have rules that intend to discriminate. I also can't have rules that don't intend to discriminate, but end up doing so by mistake – unless the unintentional discrimination is caused by the need for the business to operate in a certain way.

Because appearance and style issues are not protected, an officials association could ban every tattoo and set rigid requirements against officials reporting to games in modern trendy clothes or sporting fashion trends such as baggy pants or excessive bling. This is not in and of itself illegal.

The danger of using absolute bans to stop Generation Y stylistic trends is that absolute bans are inevitably not universally enforced – primarily because not all violations are equal, and not all settings where a violation occurs are equal. This reality leads virtually any group – not just an officials association – to either engage in the foolishness of imposing zero tolerance in situations that don't merit it or to engage in the hypocrisy of not enforcing its rules by failing to apply the absolute ban on occasion.

Associations that impose zero tolerance where it's not merited will have a public relations problem. Associations that engage in the hypocrisy of not enforcing an absolute ban, though, can create potential employment law problems.

The best solution to the problems of regulating Generation Y trends is for officials associations to provide due process. Due process boils down to notice and an opportunity for a hearing. Of course, in officials

associations, it would be wise to combine the due process with ongoing education on association practices and procedures – just in case the members aren't reading the bylaws.

An association can provide the needed due process on style issues by including the NFHS officials code of ethics and the association's local ethical standards into its bylaws, by making penalties for violations of the NFHS code of ethics and ethical standards clear, by making it very clear who has authority to enforce the bylaw provisions dealing with penalties and fines, and by providing appeals for officials who breach the code of ethics.

For example, the NFHS officials code of ethics says that officials "shall dress neatly and appropriately, and shall comport themselves in a manner consistent with the high standards of the profession." An association can place a standards committee in charge of enforcing the code of ethics. That standards committee might find that an extremely large tattoo breaches the code, and instruct the official to cover it up. The association can then grant the official an appeal to an appeals committee made up of association board members or officers.

This is due process at its finest. Association bylaws provide notice of a set of standards. The official is given notice of how a specific action may breach the standard. The official's action is then reviewed by a committee given authority under the association bylaws. Finally, the official receives an appeal from the highest body in the association.

Due process decreases the odds of an association being involved in employment law litigation. If an association is in litigation, the bylaw provisions on the code of ethics and the existence of a standards committee makes the business justification for association actions clearer. That will help associations that stumble into an employment law case when they don't force one member to cover up a small army tattoo but force another member to cover up a large fraternity tattoo, or don't fine a member for wearing a t-shirt to a game while fining his partner for wearing baggy pants.

Due process also has the added benefit of helping with the never-ending, nagging employee vs. independent contractor questions that seem to constantly arise. Generally, workers whose tattoos and style of dress are highly scrutinized look more like employees than independent contractors. However, an association that includes the NFHS officials code of ethics in its bylaws will be able to make a very plausible argument that its officials are simply meeting their contractual duties to enforce a set of rules promulgated by a national governing body, and those officials should not become employees by virtue of fulfilling a contractual obligation.

In short, the key to dealing with Generation Y on style issues is not to write absolute bans, but to cite rules and codes, include the rules and codes in association bylaws, and have a standards committee. This is a bit more burdensome, but it will pay off in the long run.

Similarly, good bylaws combined with education will help associations deal with style of work issues posed by Generation Y. Generation Y is a real-time communication generation. Associations that don't communicate will have problems with their Generation Y members. Associations that communicate, but don't do so in real-time, will have problems also.

Of course, it is imperative that associations draft good bylaws – but that's always been imperative. What Generation Y and modern communication tools do is force associations to educate members on the bylaws. No longer can associations simply tell members that the secretary has the bylaws, or hand out the bylaws at the start of the year and then never discuss them. Now, an association has to spend time educating members on bylaw provisions.

Of course, associations that draft good bylaws and educate their members will spend more time analyzing their bylaws. This will lead associations to be more transparent. This may, of course, make it harder for an association to do its daily work, but it will reduce the annoying legal problems that cropped up from time to time in the past.

The key to dealing with Generation Y ultimately is communication. Communicate via improved bylaws, improved notice, better due process and more education, and your association will become better. You may have Generation Y to thank for your improvement.

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