



Advanced HR – *Getting a Seat at the Table & Having a Positive Impact on Leadership*

Tuesday, Sept. 26, 2023 | 2:15 PM - 3:30 PM

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Advanced HR: Getting a Seat at the Table & Having a Positive Impact on Leadership

It is great that many of us in HR have thoughtful and excellent ideas, thoughts, and suggestions on how to best run an enterprise/department/government. The fact is that our experience working with systems and with a variety of people make us particularly suited to assess organizational structure and the impact that structure can have on employees. Additionally, we are uniquely situated to provide insight on how certain decisions can/will affect the morale and productivity of employees.

So, given our knowledge/experience, why are we not always at the table when leadership is making decisions? What can we do to be at the table, and what should we do when we are there? While it is clear that there is no one answer to these questions, they are worth analyzing – and some of our thoughts are set out below.

Why We Are Not At the Leadership Table

Only when we have a sense of why we are *not* at the table can we make a plan to position ourselves to be invited. The fact is that the reasons are different for every Tribe/employer, and knowing the obstacles will help us develop a strategy to be a resource that is utilized and depended upon.

1. *We have never done it that way.* This is a fairly typical scenario. When asked if HR can meet regularly with Tribal Council, we are told that this is just not the way it works.
 - a. This is not the worst scenario. Folks aren't saying no because of a bad experience, but because of no experience.
 - b. Provide the reasons as to what you can bring to the table.
 - c. Be a resource that folks find helpful, then depend upon.
2. *We used to have HR come to meetings, but all they did was say "no."*
 - a. Harder. This is a view based on past experience – which hopefully you were not a part of.
 - b. Give folks a reason to want you. Explain what you can bring to the table that is in THEIR (the Tribe's) interest in having you there.
 - c. Provide "value added" advice with an ally that is at the table.

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3. *Tribal Council Meetings Have Too Many People and Too Much Discussion As Is.*

- a. Okay, change the goal. Try to join the Tribal Council sub-committee's first.
- b. Work with Management as a first step. If you are integral to upper management, they will bring you to the meeting.

How HR Can Help Lead – On Employment Issues:
Why Getting Employment Right Matters.

While employment is only one area of leadership, it is essential to ensuring good government, the provision of effective social services, the creation of resources to support Tribes, and the welfare of Tribal citizens. Being able to attract, retain, and train employees is essential for the maintenance and growth of Tribes. In essence, it is crucial to effective leadership, and it is one of the hardest areas in which to lead.

It is crucial that you understand why getting employment right matters. Below are the fundamental issues we think HR should know.

I. Know the Scope of the Tribe's authority over employment.

1. Know the legal scope of sovereignty in employment and why this area is so complicated.
2. Review the Tribe's fundamental documents to assess the scope of that authority – the documents creating the government, tribal counsel, etc.
3. Review the Tribe's defined role for HR – both what is written and what actually occurs.
4. Assess the role of HR in employment and how it does or should support Leadership's authority in employment, and whether Leadership supports HR in that role.
5. Tribal Law.
 - a. Sovereignty/Sovereign immunity.
 - b. Tribal Law:
 - i. Tribal Constitution
 - ii. Foundational Documents (e.g. creation of Tribal Council).
 - iii. Tribal Courts

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- iv. Ordinances/Resolutions/Articles of Incorporation/Bi-laws
 - v. Rules/Policies
 - vi. Expectations of Community
- 6. State Law - State courts lack jurisdiction to enforce state labor and employment laws against Tribal Nations or their enterprises unless sovereign immunity is waived by the Tribe or by Congress. A Tribe may agree, through compacts or agreements with a state, to protect certain employee rights. For example, Tribal Nations in California have entered into gaming compacts with the State in which they agree to enact and enforce laws that (a) provide rights and remedies for employment discrimination and (b) provide for union organizing and collective bargaining.
- 7. Federal Law
 - a. Federal Laws that Expressly Apply to Tribes
 - i. *The Indian Civil Rights Act (ICRA) of 1968*
 - ii. *Employee Retirement Income Security Act*
 - b. Federal Employment Laws That Expressly DO NOT Apply to Tribes
 - i. *Title VII of the Civil Rights Act of 1964 (Title VII)*
 - ii. *Title I of the Americans with Disabilities Act (ADA)*
 - iii. *Pregnant Worker Fairness Act (PWFA)*
 - c. Federal Employment Laws That Are Silent Regarding Application to Tribes and MAY Intrude on Tribal Sovereignty
 - i. *Age Discrimination in Employment Act (ADEA)*
 - ii. *Fair Labor Standards Act (FLSA)*
 - iii. *Family and Medical Leave Act (FMLA)*
 - iv. *National Labor Relations Act (NLRA)*
 - v. *Occupational Safety and Health Act (OSHA)*
 - vi. *Health Insurance Portability and Accountability Act (HIPAA)*
 - vii. *Affordable Care Act (ACA)*

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II. Why HR should (at the least) have a role in how Leadership exercises its authority over employment

1. Assess what formal role Leadership has given HR over the creation of employment rules, enforcement of rules, advice giving, decision making, and accountability to leadership.

What documentation is there regarding HR's role?

What role is traditionally given to HR by Leadership?

- a. Advice/Assessment of Laws?
 - b. Drafting/Approving/Advising on Policies, Handbooks?
 - c. Enforcing Leadership's Vision?
 - d. Salary Surveys/Setting?
 - e. Hiring/Training?
 - f. Appeals of Employment Decisions?
 - g. Making Employment Decisions?
2. Setting of HR related Goals – What do we want?
 - a. To encourage hiring and retention of employees?
 - b. To meet the Tribe or Tribal Enterprise's mission?
 - i. Create the most revenue for the Tribe, maximize employment/training of Tribal members, etc.
 - ii. Create employment opportunities for members
 - c. To achieve some fixed purpose – water/utilities/health care.
 - d. To achieve the Tribe's mission effectively, efficiently and sustainably.
 - e. Do the goals change based on the type of Tribal employer?
 - i. Government vs. For-Profit Enterprise
 - ii. Clinic vs. Casino
 3. HR's role to protect Tribal sovereignty.
 - a. To enforce rules/laws adopted by Leadership.
 - b. To know and advise on conflicts with federal/state/compact laws.
 - c. To know and advise on conflicts with Leadership's written rules/policies.

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- d. To identify and call out inconsistencies and errors in the follow through, enforcement, or practices of employment rules/policies.

III. HR's role to advise on the laws/rules of other sovereigns.

1. Is there a federal/state law or rule that could apply?
2. How different is what Leadership proposing from what outside laws require?
3. What is the risk of having a different rule?
 - a. Impact on hiring/retention/morale?
 - b. Likelihood of litigation?
 - c. Likelihood of losing/winning?
 - d. Downside of losing?
4. How can we minimize risk and still achieve our ends?

IV. HR's role to ensure compliance with Leadership goals/rules.

1. Ensuring employees, supervisors, directors know the rules/laws.
2. Ensuring training of those individuals to understand and follow rules and laws.
3. Investigation and Enforcement.

V. All of the above can only be accomplished if Leadership:

1. Determines this is important.
2. Delegates authority to HR to act.
3. Informs the employment community what HR's role is and how HR has Leadership's support.
4. Supports HR's role.

What Else HR Can Offer Leadership if it is at the Table

HR can provide other expertise to help leadership in addition to its HR expertise described above. The key is in having these areas of expertise, and then convincing leadership that including you will be "value added." Some areas that we have seen work include:

1. **Organization Dynamics.** An experienced HR professional understands organization dynamics – what works and what does not. This information is crucial in decision making.

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2. **Impact of decision on employees.** HR can provide leadership with a realistic assessment of how decision might impact employees.
 - a. Affect on current policies
 - b. Affect on staffing
 - c. Affect on morale
3. **Leadership Principles.** HR has often been trained in essential functions/roles of leadership and can share such information with decision makers.
4. **Communication Expertise.** How to deliver and package Leadership decisions in a manner that it will be best accepted/understood. HR can contribute to any communication process.
5. **Facilitation/Group Dynamics.** HR expertise in how to facilitate meetings or “read the room” can be a source of help to leadership.
6. **Other?**

Role of HR in Assuring Realistic Goals

1. Using their expertise.
2. Ask about impact on employees, supervisors.
3. Ask about what is reasonable, practical.
4. Ask what others are doing.
5. What is the impact of different employment goals for different Tribal employers?
6. What are the ramifications of certain goals – e.g. fair employment, employment security, developing Tribal members as employees?

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