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The Gentle Red Pen

Skills and Professional Development



What are the bounds of your feedback when you — as the in-house attorney — have been asked to

review a document that's not "yours"? I'm referring to human resources policies, your company's code of conduct, letters, emails, reports, and so on. In the small law setting, assuming you've been embraced as a source of added value by one and all (or at least by most), all sorts of things reach your inbox with the belief that something in them merits "running by legal."

Sometimes this "running" presents special challenges, as when the person seeking feedback wants to limit it to your immediate reaction, and minimize the hassle you'll presumably add by firewalling your exposure to only those aspects of matters they believe they have to involve you in. My favorite manifestation of this was when a manager presented a thick document folded to a particular page, and used both of his hands to cover the text above and below the lines he wanted me to opine on.

Assuming you succeed in peeling the literal or figurative hands back from all the "other stuff," and can consider the document in its necessary context, where is the line of review beyond which the lawyer is unwelcome? If you're looking at a draft chapter in the employee handbook, or a form letter meant to notify recipients of their rights and options in the context of a highly-regulated environment, how do you tease the embedded legal issues apart from the rest of what's there? When does the wise and helpful counsel become the nitpicky ninth-grade English composition teacher?¹

1 Of course I don't mean *you*, Mrs. Riddle.

All writing in the workplace is presumably done with the goal of being understood by the reader. That objective is distinct from giving notice, being accurate, and many other worthy aims. If a letter telling someone their account is about to be debited or offset by a large sum is mired in a bog of passive voice, meaningless added phrases (add "[i]t has been determined that" to the beginning of any declarative sentence, and notice that the meaning of the sentence is unchanged), and needlessly formal construction, isn't it possible that, even though the required notice is in there somewhere, a recipient might have a harder time getting to it?

I humbly suggest that everything in a document containing the "legal stuff" is potentially legal stuff, too. If you think of the contained legal issues as the medication, and the document containing them as the syringe, it's quickly apparent why a needle featuring loops, angles, and curlicues just won't do under most circumstances. Getting this right, and helping others do so, means the difference between being able to prove that you gave notice, and knowing you were understood; between being able to prove that you asked the required questions on that form, and knowing you elicited correct and useful answers.

Still, we want to get along with our coworkers, and avoid getting a reputation as a meddling know-it-all who just can't resist any opportunity to nitpick others' efforts. This is no easy task, and it starts with a glance in the mirror. Are the changes you mean to recommend really going to make the document more concise, less ambiguous, and easier to follow, or are you just making changes so it's apparent a lawyer touched it? Can you respectfully explain why each change you've proposed improves clarity? Even if you can, is your relationship with the author healthy enough to accept this feedback in a positive way?

Show respect for the author's time. Explain your process up front, and set shared expectations for the turnaround time and scope of the feedback. Ask for a digital copy; this way, you can make the edits, track the changes, and allow someone who embraces your feedback to move forward without an additional administrative burden. If the recipient is technically proficient, you can annotate your edits with comments to explain why you propose certain changes, or ask questions where there's ambiguity requiring feedback to clear up. That said, don't force your approach on an author used to a

different one; find common ground, and adapt accordingly.

All along, help the author understand that your objective is not to grade the document, but to optimize it. The authors will be more receptive to not only accepting your edits, but to adopting the underlying principles in future works, if they see that you're adding value to something they already worked so hard on.

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