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Thanks for the lesson, coach: what employers can learn from 'Ted Lasso'

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"*I believe*" that you can often find helpful employment law and workplace lessons from TV shows — that includes the feel-good show about everyone's favorite football coach, "Ted Lasso."

For readers who may be unfamiliar with the NBC Sports commercial turned Apple TV hit show, "Ted Lasso" revolves around an American college football coach who journeys "across the pond" to London to coach a professional soccer team called AFC Richmond. The show is heartwarming and tackles difficult topics, like depression and divorce, with empathy, humor, and refreshing optimism.

There are certainly several life lessons viewers can gather from watching "Ted Lasso" — (beyond perhaps the most notable, "football is life!"). Employers specifically may have realized that several of the storylines addressed in the recently aired Season 2 finale relate to workplace issues they likely face every day. Let's take a closer look at three specific employment-related issues (and warning — spoilers ahead!).[1]

(1) Mental health

Coach Ted Lasso's struggles with anxiety are a central theme throughout Season 2. Viewers may recall Lasso was forced to leave an important match against rival Tottenham abruptly after suffering from a panic attack. Although Lasso initially tried to keep the details behind his early exit private, he later revealed the true reason to his fellow coaches, opening up about some of his mental health struggles and conversations with the team's therapist.

We learn in the Season 2 finale that one of these fellow coaches, arguably jealous of Lasso's unforeseen success in the league, took the opportunity to disclose this information to a reporter — who in turn published it — placing Lasso in the center of a media frenzy centered on his mental health.

Looking at this sequence of events from an employment law perspective, Lasso's disclosure related to his mental health could be considered confidential medical information protected by the Americans with Disabilities Act ("ADA").[2] The ADA, as well as various state and local laws, protects all confidential employee medical information obtained by an employer, even medical information that is voluntarily disclosed by an employee.

The ADA also mandates how employers must handle confidential medical information, requiring employers to keep employee medical information in a confidential file separate from an employee's personnel file. Only "authorized personnel," such as HR or ER representatives, and supervisors/managers (on a need-to-know basis), should have access to such employee medical information.

Here, (even though he was technically Lasso's subordinate), Lasso's fellow coach should have kept this medical information confidential, and he likely could have been disciplined or terminated for disclosing such protected information.[3]

Employers can also take away other important reminders from Lasso's mental health storyline. Employers may recall that several jurisdictions, including California,[4] also protect employees from discrimination based on "perceived disabilities" or being "regarded as" having a qualifying impairment.[5]

Even if Lasso had not disclosed his "panic attack," if the Club (his employer) thought his behavior was related to some sort of disability (including a psychiatric disability), and the Club then took an adverse action against Lasso (like discipline or termination), Lasso may have been able to bring a claim of discrimination on the basis of a perceived disability. This is another reason why limiting the disclosure of medical information to necessary personnel is important.

Viewers know that with the help of the team's therapist, Lasso was able to work through his anxiety and attend the games during the remainder of the season. However, if Lasso's anxiety did not improve, it is feasible he could have approached his employer requesting an accommodation under the ADA or the Family Medical Leave Act ("FMLA") as well as various state laws that provide protection.[6]

Courts have found anxiety attacks, PTSD episodes, major depression or other mental health events may qualify as a serious health condition under the FMLA which would entitle Lasso to leave for up to 12 weeks.

To qualify for an accommodation under the ADA, Lasso would need to meet the appropriate definition of "disabled." Under the ADA, the term "disability" is defined broadly enough to include psychiatric conditions, but not every mental illness is considered a "psychiatric disability." According to the legal definition under the ADA, "disability" is a "mental impairment that substantially limits one or more major life activities."[7]

To be eligible for an accommodation, Lasso's mental health issues would thus have to "substantially limit" some major life activity — like communicating, eating, sleeping, or working (e.g., coaching a game) (to name a few). However, some states, like California, have even broader definitions of "disability" that encompass a wider range of mental disabilities/mental health issues.[8]

When an employee requests an accommodation, employers do not have to accept the request automatically. Rather, under federal law (and many state laws), employers must engage in an interactive process that assesses whether providing such an accommodation is reasonable and/or would cause an undue hardship on the company.

Some jurisdictions have more stringent requirements for employers to follow when an employee requests an accommodation. For example, under the New York City Human Rights Law, employers have an affirmative duty to engage in a "cooperative dialogue" when an employee requests an accommodation (or, in some circumstances, even before an employee requests an accommodation).[9]

After engaging fully in a cooperative dialogue and deciding whether to provide an accommodation, management must then notify the employee *in writing* of the determination to complete the process.

Of course, it is important for employers to remember that they are not required to hire applicants or to retain employees whose disabilities prevent them from performing the essential features of the job with reasonable accommodation. Even if Lasso did qualify for an accommodation by meeting the applicable definition, the Club would likely argue that being present at and throughout the matches is an essential job function as head coach.

(2) Workplace relationships

Another storyline employers may relate to common workplace issues is the (perhaps unexpected) love connection between Club owner Rebecca Welton and AFC Richmond star striker, Sam Obisanya. The couple initially formed a connection on the anonymous dating app, Bantr, and their relationship raises some concerns for Welton because she is *technically* his boss. Employers may identify with Welton's struggles — how do you handle supervisor/subordinate romantic relationships?

There are several ways supervisor/subordinate relationships could end up damaging or exposing a company to potential liability. There is always a risk that a romantic relationship could end — and could end poorly. Regardless of who ends the relationship, the subordinate could attempt to spin a story for their own financial gain (depending on how disgruntled the individual truly is).

More specifically, the subordinate could claim that the relationship was not consensual, as they felt pressured to participate in the relationship in order to keep their job, which could result in claims of harassment and/or retaliation. Moreover, the relationship could truly not be consensual, if the subordinate was concerned their job prospects could be impacted by turning down any advances.

Also, there is the possibility of second-hand harassment, which occurs when employees viewing that kind of relationship feel that they are not receiving equal opportunities because they are not willing to be in such a relationship. Thus, while the first two scenarios may be the most obvious concern to employers, a supervisor/subordinate relationship could also raise other complicated issues — including allegations of favoritism, potential inefficiency, and risk of bias.

For example, at the end of the Season 2, Obisanya is offered a new job (to play soccer with a new club). A difficult decision under any circumstance — but one made further complicated by his romantic relationship with his boss.

Because of these risks, employers often have company policies that flatly prohibit such relationships. If employers are not comfortable taking such a hardline approach, at the very least, companies should have a policy that prohibits relationships by those in a direct reporting relationship and requires disclosure, or self-identification, of any workplace relationship regardless of reporting relationship so that the company can evaluate how to handle the situation to avoid any potential claims or litigation.

Looking at this sequence of events from an employment law perspective, Lasso's disclosure related to his mental health could be considered confidential medical information protected by the Americans with Disabilities Act.

Fans may have also identified another potential harassment risk in Season 2 — this time involving assistant coach, Nate Shelley, unexpectedly kissing team PR consultant, Keeley Jones. Both federal and state laws prohibit sexual harassment in the workplace and hold employers accountable for making efforts to maintain a workplace free from sexual harassment, including, in some instances, requiring mandatory anti-harassment training. For example, the following states have enacted laws that required employees and/or supervisors attend mandatory sexual harassment trainings: California,[10] Connecticut,[11] Delaware,[12] Illinois,[13] Maine,[14] and New York.[15]

As a reminder, Shelley and Jones are working for the Club at the time Shelley makes his unwanted advance, and several state laws now also afford protections against sexual harassment to all workers — including volunteers, independent contractors, and interns — not just employees.[16] Jones likely would have been protected even if she was considered a consultant and not an employee.

Of course, it is also worth noting that any potential employer liability would vary depending on Shelley's position and whether a finder of fact would find the unwanted kiss sufficiently severe or pervasive as well as whether she was subjectively offended and whether a reasonable woman in her position would have been offended.

If Shelley were to be considered a manager, his harassing actions would bind the company. However, if he and Jones were considered co-workers, Jones would need to show that the company knew or should have known about Shelley's harassment in order to establish liability. In either case, the Club would need to take steps to prevent further incidents from occurring.

Like many employers, Lasso and company certainly work hard to make their workplace a safe place for all employees. Implementing mandatory anti-harassment training is an important step employers can take to make the workplace more comfortable for employees — and reduce risk of potential liability. Perhaps if Shelley had attended the training he would not have made such an advance (although knowing in the context of the exchange, it is possible such training would not have made a difference!)

(3) Separation agreements

We learn at the end of Season 2 that two employees have left AFC Richmond for other career opportunities. Although Obisanya decided to stay, the Club does lose Jones (who is going to open her own PR shop) and Shelley (who leaves to coach at a new rival team).

Looking at Jones' departure first, viewers know Jones left on amicable terms — but had Jones raised a complaint of sexual harassment before leaving the club, management would have had to carefully draft a separation/settlement agreement in light of several new state laws aimed at expanding protections for victims of workplace harassment.

For example, California recently enacted legislation that expands two of California's existing laws regarding employee settlement agreements and nondisclosure agreements.[17] California employers may recall, California law currently precludes provisions in a settlement agreement that prevent the disclosure of factual information related to a claim pertaining to sexual assault, harassment, or discrimination based on sex, or retaliation for reporting harassment or discrimination based on sex.

Beginning January 1, 2022, this protection will be expanded, removing the requirement that the harassment or discrimination be "based on sex" and expanding the protections to all types of workplace discrimination or harassment.

Moreover, regardless of whether Jones raised a complaint of harassment, if the Club wanted to offer her severance, the Club may still be limited in its use of a non-disclosure agreement ("NDA"). For example, a recently enacted California law limits the use of NDAs in employment severance agreements, even where no litigation or claim has been filed.

Under the new law, employers are prohibited from including in severance agreements any provision that prohibits the disclosure of information about "unlawful acts in the workplace," including, but not limited to, information pertaining to harassment or discrimination or any other conduct that the employee has reasonable cause to believe is unlawful.

California employers who want to have employees sign an NDA can include "carveout language" such as: "Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful." The carveout must also apply to non-disparagement clauses typically included in these agreements.

Notably, the law still permits an employer and an employee to enter into an agreement that prohibits the disclosure of the amount paid in a severance/settlement agreement and provides that an employer can protect its trade secrets, confidential and proprietary information, that is not related to unlawful acts in the workplace.

The new law also requires that, when offering an employee a severance agreement, an employer must notify the employee that they have the right to consult with an attorney and the employer must provide a reasonable time period (not less than five business days) for such consultation.

Other states (like New York and New Jersey) have passed, and others (such as Arizona and Massachusetts) are working on enacting, similar legislation aimed at protecting victims of sexual harassment in the workplace. As such, if our US-based AFC Richmond wanted Jones to sign some sort of NDA upon separation in exchange for severance, management would need to think carefully about the structure of the agreement in light of these new/revised laws.

Implementing mandatory anti-harassment training is an important step employers can take to make the workplace more comfortable for employees — and reduce risk of potential liability.

Turning to the departure of Shelley, if I were Lasso and team, I would be significantly concerned about the disgruntled coach joining a competitor (because as Season 2 has shown — Shelley cannot keep secrets or be trusted).

In an attempt to preserve their trade secrets, the Club could have attempted to enter into a severance agreement with Shelley that included a strong non-compete and/or non-solicitation clause or try to enforce one that he already agreed to and signed in his current employment documents.

However, employers are likely acutely aware of the recent trend in (and already existing) legislation barring, or stringently limiting, the scenarios where employers can obtain such enforceable restrictive covenants with employees.[18]

One of the newest states to join this growing trend is Illinois, which recently passed amendments to the Illinois Freedom to Work Act[19] that take effect on January 1, 2022, and institute a number of new requirements designed to restrict the use of non-compete and non-solicitation agreements.

The new law places new and revised restrictions based on employee salaries and also prohibits the enforcement of non-compete

and non-solicitation agreements with any employee terminated, furloughed, or laid off as a result of business circumstances or governmental orders related to the COVID-19 pandemic (or under circumstances that are similar to the COVID-19 pandemic).

However, employers may circumvent this restriction if, for the duration of enforcement, the employer pays the affected employee their base salary at the time of the termination minus any compensation the employee earns from other sources during that time.

In addition to other changes, the amendments also require employers to advise employees in writing of the need to consult with an attorney before entering into a non-compete and to provide the employee with a copy of the covenant at least 14 days prior to employment or with at least 14 days to review.

In this changing legal landscape, it may have been difficult for AFC Richmond to obtain an enforceable non-compete or non-solicitation agreement with Shelley, but at the very least, the Club should have ensured he signed some sort of agreement with very clear, enduring confidentiality provisions before departure.

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As Ted Lasso once said, "I do love a locker room [workplace]. It smells like potential." And hopefully reading this article and watching "Ted Lasso" helps employers ensure their own workplaces meet their potential (and comply with employment laws while doing so)!

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Notes

[1] As mentioned, "Ted Lasso" centers around a football (soccer) club in London — and the show often highlights the differences between UK and US rules, vernacular, and customs. However, for purposes of this article, we have moved AFC Richmond to the United States to take a look at the show from a US employer-lens.

[2] 42 U.S.C. § 12101 *et seq*.

[3] Although beyond the scope of this particular article, it is worth noting there are additional privacy rules to consider in the context of college athletes (students) under the Family Educational Rights and Privacy Act (FERPA). *See* 20 U.S.C. § 1232g.

[4] California Fair Employment and Housing Act, Cal. Gov. Code § 12940.

[5] 42 U.S.C. § 12102(3).

[6] Moreover, if Lasso's anxiety was a result of his employment, he could also try to argue that he is entitled to worker's compensation benefits.

[7] 42 U.S.C. § 12102(1)-(2).

[8] *See e.g.*, Cal. Gov. Code § 12940.

[9] N.Y.C. Admin. Code § 8-102.

[10] Cal. Gov. Code § 12950.1(a).

[11] Conn. Gen. Stat. § 46a-54(15)(C).

[12] Del. Code Ann. tit. 19, § 711A(g).

[13] 775 Ill. Comp. Stat. Ann. 5/2-109.

[14] Me. Rev. Stat. tit. 26, § 807(3)–(6).

[15] N.Y. Lab. Law § 201-g(2).

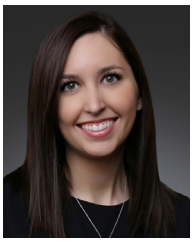
[16] *See e.g.*, California, Cal Gov Code § 12940.

[17] *See* Cal. Gov. Code § 1001; Cal. Gov. Code § 12964.5.

[18] *See e.g.*, California, Cal. Bus. and Prof. Code §§ 16600-16607, Massachusetts, Mass. Gen. Laws ch. 149, § 24L, Washington, RCW 49.62.005, D.C., D.C Act 23-563, Oregon, Or. Rev. Stat. § 653.295 and Hawaii, Haw. Rev. Stat. § 480-4.

[19] 820 ILCS 90 et seq.

About the author



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