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INSIDE

Key to fact-finding for solid answers

MD firm out \$750K for racial bias

Dealing with disgruntled staff

Was harassment taken seriously?

Older worker, younger supervisor: 3 keys to handling discipline issues

Supervisor on the hot seat for age bias

This doesn't make any sense," Supervisor Mark Baber said. "These numbers just won't balance out."

"Oh, that's because that one order was wrong last week," Adam Walsh said. "But we fixed it before it shipped."

"Last week!" Mark said, surprised. "If you changed it last week, why didn't you tell me last week?"

Adam shrugged.

He was the most-senior employee in the building, and Mark was expecting some pushback because Adam didn't like to be managed too closely.

"Someone made a mistake and I caught it ahead of time and I corrected it," Adam said firmly. "It's good we never shipped the wrong stuff, right?"

"Yes," Mark agreed. "But when there's a change that large, tell me right away."

A junior manager?

"Look, I'm 50 years old," Adam said, "and I've been doing this job longer than anyone here."

"I really don't need some junior manager watching over my shoulder all

Please see Older worker ... on Page 2

Sharpen Your Judgment

Worker fired after claiming sex harassment

It had been a great weekend, and HR manager Lynn Rondo was feeling refreshed coming into work on Monday.

But there was company attorney Eric Bressler hovering outside her office. "Lynn, why can't people just behave themselves?" he said.

"Good morning to you too, Eric," said Lynn. "Who's causing trouble this time?"

"Nina Altman. She's taking us to court over her termination. She was let go the same day she reported sexual harassment – which doesn't look good," he replied.

Breaking the rules

"Nina was let go for a totally unrelated incident," Lynn said.

This regular feature sharpens your thinking and helps keep both you and your firm out of trouble. It describes a real legal conflict and lets you judge the outcome.

Eric didn't seem to hear. "She's saying we had it out for her because we didn't fire that guy right away that was creeping on her."

"We reprimanded, counseled and reassigned that individual," Lynn countered. "There was a second incident, and we fired him."

"Nina's mistake was she went into the company database – which has sensitive customer information – for reasons not related to her work."

"Our technology policy says that's grounds for termination, and she knows that."

Nina sued for retaliation for reporting sexual harassment, and the company fought to get the case dismissed.

Did the company win?

Make your decision, then please turn to Page 4 for the court's ruling.

Older worker ...

(continued from Page 1)

the time, OK?”

As Adam walked off, Mark realized he had his work cut out.

Adam seemed to be growing ever more difficult to deal with. He rarely communicated with Mark and this wasn't the first time he failed to mention a change that had a ripple effect around the building.

With Adam's performance review coming up, Mark saw it as a chance to renew his effort to open up communication and improve the situation.

“You want to put me on a job improvement plan?” Adam asked when Mark broached the topic during the performance review.

“Me!”

“Don't think of it like that,” Mark suggested. “It's really just a brief meeting every week to verify we're sticking to procedures.”

Not born yesterday

“I wasn't born yesterday,” Adam shot back. “You're just wanting to build yourself a paper trail so you can get rid of me. And you know what? I'm starting to think you don't like older people.”

“Your age has nothing to do with it,” Mark tried to assure him. “I was brought in to help improve

this area and that is exactly what I intend to do.”

But Mark continued to have problems with Adam sharing information.

Failed to share info

Adam failed to submit weekly activity reports on time. He didn't share customer correspondence with Mark and sometimes he wouldn't even forward emails.

The last straw was when Adam made a promise to a customer that the company couldn't possibly keep.

Mark discussed the problems with his fellow managers and HR, and it was decided Adam would be let go.

When Adam learned he'd been replaced by a younger person, he sued his former supervisor for age discrimination.

He claimed Mark made his job so difficult that he couldn't perform it correctly, no matter how hard he tried.

And he alleged that other employees in similar situations were treated more favorably.

Decision: The firm won when the court dismissed the lawsuit.

The court said “no reasonable jury could conclude that an employee who made such a promise to a customer without management's approval ... was performing in a satisfactory way.”

Case: *Rodriguez v. Miller Waste Mills, Inc.*

What you need to know:

Performance reviews are a good time to kick off improvement plans for those who need one.

When designing such a plan:

- Keep goals clear.

Avoid sending mixed signals on what the employee needs to achieve.

- Keep goals simple.

If expectations are too high, a struggling employee isn't likely to reach them.

- Work with HR.

They'll have good input on what has been tried in the past, and what worked and what didn't.

TEST YOUR KNOWLEDGE

Keys to fact-finding when investigating complaints

Employee complaints about mistreatment, bias, and the like often fall into the he-said/she-said category, where it's up to the supervisor to determine who's telling the truth.

To test your knowledge of how to investigate and detect lies, respond *True* or *False* to the following:

1. If an employee is going to give you an account of an incident, it's best that you listen to the account in a face-to-face meeting to, among other things, pick up on body language.
2. When taking a spoken statement, make note of your questions while the person is talking, and save the questions for the end, rather than asking them during the statement.
3. When asked to retell a story, a liar will often add details and a truthful person will recite nearly the same details as in the first statement.

ANSWERS

1. *False.* While most of us want to believe we're skilled interrogators who, as in detective movies, can pick up on expressions and body language, in fact the opposite is more common. People use body language to cover lies, sometimes quite skillfully. A written statement is always better. Some experienced interrogators even suggest that when you must take a spoken statement, do it on the phone.
2. *True.* In a face-to-face, the idea is to let the person keep talking, and possibly make contradictory statements. If the person stops talking, you then can ask a question or say, “What happened next?”
3. *False.* Studies show that a liar will usually recite details a second time, without added information. Truthful people who are asked for a second telling often remember details they failed to mention the first time.

Answers to the quiz:

Where other supervisors went wrong

News you can use to head off expensive lawsuits

This feature highlights violations of workplace laws. You can learn how other supervisors got off track, what the mistakes cost and how to avoid them.

MD janitorial service pays \$750K for racial bias

What happened: Diversified Maintenance Systems, LLC, engaged in an ongoing pattern or practice of race discrimination against African-American job applicants in Maryland and the Washington DC and Philadelphia metropolitan areas. The company refused to hire blacks for custodian, lead custodian or porter positions, according to the EEOC.

District managers racially harassed an African-American janitorial supervisor by calling him racial slurs and using other abusive language in the presence of customers and employees. Although the supervisor complained to upper management and the human resources department, Diversified did not stop the harassment, but instead fired the supervisor.

Decision: Along with paying \$750,000, the company is enjoined from discriminating against or harassing anyone based on race and will hire an EEO monitor. Diversified will also implement a targeted hiring plan, including tracking the number and race of applicants, and reason(s) why they are not hired.

Cite: EEOC v. Diversified Maintenance Systems, LLC.

Colorado contractor pays \$42.5K for disability bias

What happened: Colorado Excavating, Inc. fired a female office assistant just four days after she suffered a seizure at

work. Before firing the employee, Colorado Excavating failed to engage in the required interactive process to discuss potential accommodations.

Decision: Along with paying \$42,500 in back pay and damages, the firm agreed to provide annual training for all employees, management officials, and human resources personnel with an emphasis on disability discrimination and the interactive process. The first annual training will include a component of Epilepsy 101 training provided by the Epilepsy Foundation of Colorado. The decree also requires periodic reports to the EEOC of all internal disability discrimination complaints.

Cite: EEOC v. Colorado Excavating, Inc.

San Diego country club out \$125K for harassment

What happened: The restaurant manager at Fairbanks Ranch Country Club, Inc., Rancho Santa Fe, CA, sexually harassed a class of young female servers almost daily. The EEOC alleges that the manager routinely abused his position by requiring female servers to acquiesce in his sexual advances for job benefits. The behavior was so prevalent that other male employees felt free to engage in sexual harassment as well.

Decision: Along with paying \$125,000, the country club must establish a sexual harassment complaint hotline for employees.

Cite: EEOC v. Fairbanks Ranch Country Club, Inc.

STOP, LOOK, LISTEN ...

Responding to complaints from disgruntled workers

When you terminate an employee and they leave quietly without incident, you hope that's the end of it.

But "vent letters," messages in which ex-employees air all their grievances, are becoming increasingly common – and it's important to know how to respond.

Identify any legal risks

A few employees might just want to get some things off their chest, but others may raise some serious issues that need to be addressed.

Here's how employment lawyer Adam Bartrom of the firm Barnes & Thornburg says you should react:

Take complaints seriously and identify legal risks. You should treat these letters as if they were formal complaints raised in an exit interview.

The ex-employee may even offer some helpful insights or suggestions.

It's also important to be on the lookout for any potential legal problems raised, such as harassment, discrimination or retaliation allegations.

Document, document

Investigate and document. If an ex-employee brings up something that needs to be looked into, save the letter and launch a well-documented investigation.

Make sure your managers know to send vent letters with serious complaints to HR.

Respond to letters with a PR mindset. Remember that anything you say could end up in court, so respond carefully and follow the usual policies.

For example, does your company typically respond to social media comments or Glassdoor reviews? If it does, reply to a vent letter in the same polite, professional way.

It's important to note that employers can avoid most vent letters if terminated employees are given the opportunity to speak their minds during exit interviews.

SUPERVISORS SCENARIO

Employee: ‘So, they call me a %\$#@! and you think I should feel honored?’

Did supervisor take her harassment complaints seriously?

“You’re joking, right?” Carl asked his employee, Rosa.

“This is no joke,” Rosa replied. “I have to listen to a string of obscenities all day every day from those guys I work with.

“And what do you think about this?” she asked as she held up a piece of cardboard with an obscenity scrawled across it.

“That’s what was on my chair when I came into work this morning.”

Carl looked at the piece of cardboard and exhaled. “I warned you when you took this job that they could get really crude.”

The real problem

“And I told you I wouldn’t let their language bother me,” Rosa said. “It’s not just their language. It’s that they always direct it at me, and no one else.”

“They always seem to do that with ‘the new guy,’” Carl explained. “Sometimes, it’s just their dumb way of initiating people into the group.”

“So when they refer to me as ‘that %\$#@! b**h who should be doing a

woman’s job,’ I should feel honored to be part of the gang?” she shouted.

“See, Rosa,” Carl responded. “You seem to think it’s OK when you use language like that. Just lighten up. It’ll end soon.”

Rosa refused to take Carl’s advice. She sued for sexual harassment, saying she was targeted and her supervisor refused to take any action to stop it.

The company argued the scenario was the normal give-and-take, and that she hadn’t been singled out any more than any other new employee had.

Decision: The company lost and had to pay \$25,000 in damages to the employee. A court said the employees chose to illegally harass Rosa because she was a woman. Worse, her supervisor didn’t take her complaints seriously.

Key: It’s dangerous to think that a complaint will solve itself. Courts go hard on supervisors who don’t take action when others appear to gang up on one worker.

Case: Parker v. General Extrusions, Inc.

What you need to know:

To tell the difference between give-and-take and real harassment ask yourself: Does it make the targeted employee feel harassed?

If so:

- Talk to the offending employee individually about the behavior and why you want it to stop
- Warn them of the consequences if they don’t stop or if they try to make things worse because of the complaint, and
- Let the complaining employee know you’ve taken action.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes. The company won when a court dismissed Nina’s case.

Nina’s attorney argued that because she was fired at the same time she was making an accusation against a harasser, the company was punishing her for reporting sexual harassment.

She also said that violating company technology policy wasn’t serious enough to warrant firing her.

But the court rejected the case because the company showed it took adequate steps dealing with Nina’s original harassment complaint.

When it was clear the offending co-worker didn’t get the message the first time, he was let go.

The court ruled that a victim of sexual harassment isn’t immune from discipline for breaking workplace rules.

A timely and reasonable effort

This case shows that “prompt remedial action” for harassment doesn’t mean automatic termination.

What matters is whether the company made a timely and reasonable effort to put a stop to inappropriate behavior.

You may not always be able to prevent sexual harassment, but it’s important to respond to incidents as soon as possible.

Cite: Abbood v. Texas Health and Human Services Commission

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