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Be professional when it matters

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Key negotiating skills to work on

Was dumb remark proof of bias?

Boss wants more from seasoned employee – but is that age bias?

Employee claims younger people got a pass

“I’m not sure why you are even thinking of disciplining me for missing that order,” Diana said. “I’m not superhuman.”

“You are the one responsible for filling that order and it never got done,” said Jerry, her supervisor. “It seems pretty straightforward to me – and it’s the second time this month.”

“That’s true, but that’s because my workload has nearly doubled since we cut back and laid off people,” Diana explained. “You gotta know something is going to fall through the cracks.”

“But what really gets me,” Diana added,

“is that Janice has missed as many orders as I have and I don’t see you or anyone else disciplining her.”

Different expectations?

“You have decades more experience than she does,” Jerry said. “I expect more from you because you’re ...”

“Older?” Diana chimed in.

“Now I see what this is really about,” Diana said. “Janice and I do the same job and when I foul up it’s a big deal because I’m 61. But Janice is what, 26? And when

Please see Age bias? ... on Page 2

Sharpen Your Judgment

ADA violation? Worker with panic attacks let go

HR manager Lynn Rondo was looking over new job applications when she was startled by the vibrating of her cell phone.

Company attorney Eric Bressler’s calling me on my cell? What could this be about? she wondered.

“Hi, Eric,” Lynn answered.

“Hey, Lynn. I’m about to go into court. Real quick, the new guy that we terminated because he was having panic attacks ...” Eric began.

“Rick Landis, you mean?” said Lynn.

“Right,” Eric replied. “What doesn’t look good is that anonymous caller who reported that Rick had bipolar disorder.”

“It’s true the ADA says qualified employees can’t be fired because of a perceived disability,”

Lynn said. “But that isn’t the issue here.”

“We were hiring Rick for a high-stress position. So certain conditions – like anxiety and panic attacks – would be a safety concern.”

Is it discrimination?

“We would’ve hired somebody else if we’d known. He wasn’t honest with us and we let him go,” she added.

“I’ll have to take a closer look at this,” Eric said. “If he’s a qualified individual under the ADA, we could run into trouble.”

Rick sued for disability discrimination, and the company fought to get the case dismissed.

Did it win?

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.

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

Age bias? ...

(continued from Page 1)

she fouls up she gets a pass. That's just not fair, now is it?"

"You have performance standards that you agreed to," Jerry said, "and they include getting orders filled and out the door on time."

Retirement plans

"And I assume everyone else still left here has the same standards," Diana said.

"Forget about everyone else and focus on your duties," Jerry told her.

"This is about your performance."

Diana clenched her teeth and stood silent.

After a few moments she said, "And why did you ask me about my retirement plans?"

"What about it?" he said.

Future needs

"I never told anyone I wanted to retire," she said. "What am I supposed to think when you ask something like that, other than you want to replace me with someone who is younger?"

"I was just working on a staffing plan for future needs," Jerry said. "HR asked for that."

"And so I guess you asked Janice if she was planning on leaving anytime soon?" Diana asked.

Jerry reminded himself to remain calm.

Motives questioned

"At the end of the day you're going to get a letter from me detailing your performance problems and a warning that if you don't improve we'll need to let you go," he said.

When Diana was pressed for time a few weeks later and made another shipping mistake, Jerry fired her.

She turned around and sued the company for age discrimination.

She claimed that 1) younger workers were not treated the same way and that 2) her supervisor deliberately pushed to get her to retire.

The firm asked the court to toss out the case. It said the issue was strictly about the performance of an experienced employee who needed to be more dependable and reliable than the less-experienced workers.

Decision: The company lost

when the court refused to dismiss the case. The judge found the circumstances raised enough suspicion about age bias and that a jury should be impaneled to hear the case. The employee's two claims, taken together, raised questions about the supervisor's motives.

Case: Acevedo-Parrilla v. Novartis Inc.

What you need to know:

Certainly you should hold employees to stated performance standards. But to avoid the appearance of bias, those standards must be:

- Largely equal for all similarly situated employees – those doing the same job under the same circumstances.
- Reasonable and fair to all employees, regardless of their age.
- Kept up to date. For instance, job descriptions should be updated and changed to reflect the changing nature of work, and the education and experience levels required for those employees doing the work.

TEST YOUR KNOWLEDGE

Staying professional in a real-world workplace

It's tough to be the boss at work and buddies outside of work – especially if you're a manager who was promoted from the ranks.

To test your knowledge of maintaining professionalism, respond *True* or *False* to the following:

1. When the best candidate for a task or a promotion is a friend, it's best to shy away from giving it to him or her because others will assume the friendship was the reason.
2. Leaders should let their friends within the company know they won't receive any special treatment or favors, and they want to be treated like any other boss.
3. If you've had a falling out with a work friend or you feel as though the relationship is no longer mutually beneficial, don't let that affect your job. Remain professional and always take the high road.

ANSWERS

1. *False.* If a friend is the most qualified, give that person the job. If the friend is equally as qualified as another employee, and bias on the part of the leader is feared, ask another respected leader in the company to make the final decision.
2. *True.* It's essential to set parameters with close friends shortly after you've assumed a position of authority. People will try to take advantage, and a new leader can have so much going on that it can be hard to discern when someone is trying to take advantage.
3. *True.* Despite rough going here and there, work friendships boost positivity and productivity, and can turn into lifelong relationships. As long as you proceed with caution and always remember to be professional, work friends are people with whom you can share valuable and meaningful experiences for years to come.

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.

GA cabinet maker out \$25K for disability bias

What happened: American Woodmark Corporation, a wood cabinetry manufacturer in Jackson, GA, denied an employee's request for an accommodation in the form of two days of unpaid leave in order to visit a doctor for treatment of her disabilities. Instead, American Woodmark assessed attendance infraction points against the 16-year employee of the company, under its rigid attendance policy. Next, American Woodmark fired the employee for exceeding the permissible number of attendance points, despite her providing a doctor's note and updated Family and Medical Leave Act forms showing she was absent for purposes of treatment and recovery relating to her disabilities.

Decision: Along with paying \$25,000, the firm agreed to create and implement an ADA policy, provide employment discrimination training to its employees, and post anti-discrimination notices at its Jackson facility.

Cite: EEOC v. American Woodmark Corp.

Credit union settles age & sex bias claim: \$450K

What happened: Tucoemas Federal Credit Union, of Visalia, CA, failed to promote three qualified internal female applicants over the age of 50 and instead hired a younger male applicant with no prior credit union experience. The EEOC further claims the

company retaliated against two of the female employees after they filed complaints with the EEOC, constructively forcing one employee to quit and firing another.

Decision: Along with paying \$450,000, the firm will hire an EEO monitor, review and revise policies on discrimination and retaliation; train employees on sex and age bias; and establish a tracking system for recruitment, hiring, promotions, terminations, and sex and age discrimination complaints.

Cite: EEOC v. Tucoemas Federal Credit Union.

NC nursing home pays \$30K for pregnancy bias

What happened: The Scottish Pines Rehabilitation & Nursing Center, in Cary, NC, offered transitional duty or other job modifications to accommodate restrictions of employees with work-related injuries or illnesses, but not to employees with pregnancy-related restrictions.

When it refused to accommodate the pregnancy-related 50-pound lifting restriction of a certified nursing assistant, and instead placed her on unpaid leave and terminated her employment when she could not return to work without restrictions, it was sued by the EEOC.

Decision: The firm agreed to pay \$30,000 to the employee and bring its policies into compliance.

Cite: EEOC v. Century Care of Laurinburg, Inc., dba Scottish Pines Rehabilitation & Nursing Center.

STOP, LOOK, LISTEN ...

Negotiating skills that make all the difference

Leaders negotiate from the moment they get up, and yet, successful negotiators are able to develop long-term relationships and help themselves and others succeed.

Here are the key negotiating tactics:

Balance participation. All people want to be involved in decisions that affect them. Once managers offer their thoughts, it pays to ask for the other's thoughts, too. Most importantly, managers who are able to see the situation through their employees' eyes first, find workable solutions faster.

Understand the other side. Before moving on to the final decisions, it's important to show understanding for what others have said.

Some key phrases:

- "I understand that you want ..."
- "I sense that you feel this way about the situation ..."
- "You seem to want ... Do I have that right?"
- "Your position is ... Would you agree with my assessment?"

Offer options. It's a good idea for leaders to come to the meeting knowing their highest priorities and what they'd be willing to give up to make negotiations work. They should also encourage others to do the same. Then once both sides understand one another's positions, leaders can throw out several potential solutions.

Offer help. Negotiations are a give and take. But employees don't always see negotiations that way. In their eyes they're losing something. Leaders can change that mentality by offering to help out in some significant way, making it clear they're a team player.

Make others look good. Compliment others on what they achieved and the work they've accomplished. Help them sell the final decision to others who will be affected. Arm them with written documentation (agreements, notes of thanks, completed reports, etc.) so they can show others what was done and have proof of their success.

SUPERVISORS SCENARIO

After layoff he claims supervisor's 'dumb' comment was proof of ethnic bias: Was it?

Boss's offhand remark about worker's accent lands her in court

Anne double-checked the list of names as Ramon walked into her office.

His words came out softly. "You wanted to see me?" he said.

"You know about the layoffs because business has been down," Anne said. "There's no easy way to tell you, but you are going to be let go. HR will give you all the details ..."

"Now hold on," Ramon interrupted. "Did you have a say in who's on that list?"

"Of course," she acknowledged. "But we mostly went by seniority and ..."

"... And by who has a 'funny' accent," he broke in again.

Cartoon character

"What are you talking about?" Anne asked, stunned.

"Don't tell me you've forgotten about your little comment when I first started here," he said. "How my accent reminded you of some cartoon character on TV."

"Ramon, that was a while ago," she said. "And you know that I admitted it was a

dumb thing to say. I even made a point to apologize in front of everyone."

"You of all people should know it doesn't work like that," Ramon said. "You can't insult me, and then pretend to take it all back, and then lay me off."

"I get that you're upset," Anne said.

"Upset!" Ramon repeated. "You're going to find out how upset I am."

Ramon sued his former boss for ethnic discrimination, claiming her well-documented comment played a role in his being laid off.

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

The court noted there was just a single comment by the supervisor who at the time expressed regret. The judge found no clear connection between that and a financial downsizing.

Key: We've all said something we wished we hadn't. In this instance, the boss addressed it immediately.

Case: de la Cruz v. Children's Trust of Miami-Dade.

What you need to know:

If you think you've done or said something that might make you appear biased:

- Discuss it face-to-face with the affected party and don't just hope it will go away.
- Describe the incident to your HR department so they can help decide what steps might be taken.
- Avoid putting yourself in a position where your action might be viewed as being improperly connected to a decision you've made, like a promotion or disciplinary action.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes.

The company won when a court dismissed Rick's case.

Rick's attorney argued that the phone tip the company received changed the way he was treated in the workplace, and was the reason he was fired.

According to the ADA, it's just as illegal for employers to discriminate on the basis of a perceived disability – whether it exists or not – as it is to show bias against someone with an obvious or known disability.

But the court rejected the case because there wasn't enough evidence to prove the employer believed that Rick had a recognized disability.

The court ruled that a "significant history of anxiety and panic attacks" interfered with his ability to perform the job and was a legitimate reason for dismissal.

ADA and employee safety

This case shows that while it's against the law to discriminate against qualified disabled employees, this employee's anxiety and panic attacks disqualified him from the job.

When the nature of a job disqualifies certain disabled individuals because it would compromise their safety and the safety of others, it generally doesn't violate the ADA to remove them from that position.

Cite: Camoia v. City of New York.

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