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March 2, 2020

OUR TOP STORY

**Older worker out,
younger one in:
Coincidence or
age bias?**

ONLINE

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Management Minutes

6-point checklist to
document better



Stay Legal!

7 questions to ask
yourself before deciding
whether to fire someone



INSIDE

**Steps to tame the
workplace bully**

**Ohio foundry
resolves bias suit**

**Job descriptions
for Millennials**

**Lame apology
doesn't cut it**

Boss put worker in crummy job with same pay: Can she claim bias?

Supervisor said he was trying to save worker's job

The bad news is that with all the reorganization going on here, we're going to have to eliminate the job you're doing now and move you into a clerical position," Mitch explained.

"And the good news is?" Lois asked.

"That you're going to keep your same pay and benefits," Mitch answered quickly.

"I don't know," Lois responded. "I know what the clerical people do, and it doesn't sound very attractive to me."

"It isn't," Mitch agreed. "But we really don't have much choice. And besides, if you really think it's that bad, you could

always retire. You're eligible, right?"

"I am," Lois said, "though I'd much rather keep working."

"Then it's totally your call," he said.

'Booted out'

The next day, Lois stormed into Mitch's office and spoke immediately: "I thought you said my job was being eliminated. I just heard you're giving Brian the position I'm being booted from."

"Whoa," Mitch said. "That's not what's happening. Brian is being put in a new

Please see Crummy job ... on Page 2

Sharpen Your Judgment

Was she fired for her behavior, or in retaliation?

HR manager Lynn Rondo was still half asleep as she walked into her office on a Monday morning. But before she could even get settled in, company attorney Eric Bressler followed her through the door.

"Eric! You startled me," Lynn said.

"Sorry," Eric said. "But it's an emergency. I need to talk to you about Georgia Simmons. She's claiming that we retaliated against her for reporting sexual harassment."

Didn't say it was harassment

"We fired Georgia because she violated company policy," she said. "She got into a fight with a co-worker. We had no choice but to let her go."

"Apparently, she got into the fight with Jesse

because he'd been sexually harassing her," Eric explained. "She wanted it to stop."

Lynn frowned. "Georgia mentioned in the past she had issues with Jesse, but she never told me it was sexual harassment."

"But she mentioned it after the fact?" Eric prompted.

"Yes," Lynn conceded. "But at that point, we'd already fired her. And I don't see why this matters anyway, since we also fired Jesse for his part in the fight! He won't be harassing anyone else."

When Georgia sued for retaliation for reporting sexual harassment, 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.*

Crummy job ...

(continued from Page 1)

position, not the one you were in.”

“He told me what he’s going to be doing, and it’s the same job I’m doing – or I should say I was doing,” Lois argued. “All you did was change the title. Is this all because Brian is 30 years younger than I am?”

Mitch sighed as he responded: “Brian is the best qualified for that job. That’s the way I see it.”

“You don’t have to tell me how qualified he is,” Lois shot back. “I was the one who supervised and trained him.”

Bottom line

“So, what are you trying to tell me?” Mitch replied. “That it’s impossible that Brian could be better than you, just because you have more experience and used to be his boss?”

“This isn’t about Brian’s abilities,” she came back. “This is about you pushing an ‘old lady’ out of a job I’m qualified for and replacing me with a younger guy.”

“While, I might add, I get shuffled off to a crummy job.”

“Enough is enough,” Mitch fumed. “I’ll run this down for you one more time and that’s it.”

“You have a chance to keep your same pay and bennies if you take the clerical job, so we’re not pushing you out.”

“The job Brian’s taking may be similar to what you did, but it’s not

the same. And if you don’t like it, you can retire with a full pension.”

The charges

Lois end up suing the company for age discrimination, contending in court that:

- what was essentially her job had been given to a younger person
- she’d been forced to take a less prestigious job, amounting to a demotion, and
- her boss had shown his bias by mentioning retirement.

The company responded that the younger employee had been placed in a new job and that it had treated Lois fairly by letting her keep her same pay and benefits. And the “retirement” remark was just for the purpose of explaining options.

Decision: The company lost.

A judge said the company’s reasons weren’t strong enough to keep the case from going to a jury.

Moving the employee out and bringing in a younger worker was too suspicious to be coincidence.

Plus, the talk of retirement showed the supervisor considered age a factor, and he had agreed the clerical job was a step down.

Key: Moving people to improve efficiency is valid legally, but you have to be careful that decisions are based on ability and not on perceptions about whether someone’s “up to the job” because of age.

Case: *Gallo v. City of Norwalk.*

What you need to know:

You have a right and responsibility to put the best people in suitable positions. But when you’re thinking about moving people around:

- Talk with HR to see how similar situations have been handled
- Don’t assume that “same pay” means “no demotion,” and
- Don’t let age or eligibility for retirement enter into the decision or qualifications.

TEST YOUR KNOWLEDGE

Key steps for taming that workplace bully

Three in four employees are affected by bullying at work, and one in three are victims of bullying. So, what do you do about it?

To test your knowledge of how to deal with workplace bullying, respond *True or False* to the following:

1. You’re in a meeting when you witness one of your employees being bullied by another supervisor. You should step in immediately and teach that supervisor a lesson.
2. Never confront a workplace bully via email. Always make sure the initial confrontation is face-to-face.
3. You’ve made some mistake and a co-worker or another supervisor begins to bully you about it by harshly correcting you in front of others. You should quickly admit to the mistake and then tell them you’re willing to discuss how you can correct the problem.

ANSWERS

1. *False.* Most experts suggest taking notes about the incident then later presenting your observations to the offending supervisor, including a strong request that it not happen again. Addressing the situation in the heat of the moment can create confusion and make things worse. *False.* Despite all the warnings about the shortcomings of using email, the bullying situation is one where email can be preferable because it creates a written record of the situation.
2. In time a face-to-face interaction will be necessary. But initially, email can be an effective starting point.
3. *True.* The best approach is to meet the problem, and the bullying, head-on. Admit to the mistake and commit to work to fixing it so that it doesn’t happen again. Evading responsibility will only encourage the bully to keep doing the same thing and taunting you.

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.

SC pest control outfit hit with disability bias claim

What happened: Pest control and landscaping company Massey Services, Inc., of Charleston, SC, denied a former employee's request for leave after she became hospitalized due to her disability, and instead discharged her from her position. The EEOC alleges that Massey actively recruited other candidates for the woman's office manager position and refused to rehire her – even though she sought to return to her prior job – in retaliation for her accommodation request.

Decision: The firm agreed to pay the former employee \$63,000, report its compliance efforts to the EEOC for two years and provide reasonable accommodations and other required considerations to employees.

Cite: EEOC v. Massey Services, Inc.

United Airlines out \$321K for Internet harassment

What happened: A pilot for United Airlines, Inc., headquartered in Chicago, frequently posted explicit images of a flight attendant to multiple websites, without her consent, making reference to her name, home airport, and the airline's tagline "Fly the Friendly Skies."

The images were viewed by co-workers of the flight attendant, as well as untold numbers of potential passengers, causing her humiliation and embarrassment and adversely affecting her work environment. United failed to prevent and correct the pilot's

behavior, even after the flight attendant made numerous complaints.

Decision: United agreed to pay \$321,000, plus attorney's fees, to the former flight attendant, and to strengthen its sexual harassment policies.

Cite: EEOC v. United Airlines, Inc.

Ohio foundry resolves racial harassment claims

What happened: Top officials at Falcon Foundry, Lowellville, OH, subjected minority employees to derogatory racial comments and allowed a noose to hang in the facility. The EEOC also found that minority employees were disciplined for violating company policies while white employees who violated the same policies were not disciplined. The EEOC found that a class of individuals were harassed and discriminated against because of their race, black; their national origin, Hispanic; or their association with a black or Hispanic employee.

Decision: Falcon Foundry Company conducted an internal investigation, trained its employees, and terminated a company official to resolve the claims filed against it. It also will provide substantial monetary relief to identified victims. The company will hold managers and supervisors accountable for immediately addressing discrimination in the workplace and provide ongoing training to all employees.

Cite: EEOC v. Falcon Foundry Company.

STOP, LOOK, LISTEN ...

Creating job descriptions that attract Millennials

If you are looking to hire Millennials, it's important to consider both their psychological and practical needs, and to tailor your approach to them. Here are some ways to do that:

- Highlight the impact they will be able to make while working for your company, for example, eco-friendliness or other ways to save the world.
- Impress them quickly by a great design of your ad, a bright and catchy image, an interesting headline and a short vivid description.
- Explain which perks and career growth opportunities your employees will get by staying with the company because Millennials tend to not believe that they will have any chance for growth while staying in one place.
- Specify the responsibilities, and accordingly, perks because too many requirements without any specifics do not seem to look appealing for Millennials.
- Focus on the friendly working environment with teamwork and ways of spending free time together because a corporate culture meeting their values is quite attractive for young people.
- Be accurate with your social media profile and try to support your company's positive image with video clips, pictures of actual work-related projects and photos published there.
- Mention the perks and try to be more specific about them by highlighting the benefits to Millennials in particular.
- Focus on the tone and style of your job advertisements, and make them original, informal and fun without too many clichés or attempts to over-impress candidates.
- Post your ads on social media picking out the platform which is the most popular one with your target audience – for example, Instagram.

SUPERVISORS SCENARIO

Harassed employee says ‘lame’ apology and confidential discipline don’t cut it

Victim refuses to return to work unless harasser is fired

“I think we have the problem with Gene resolved,” Sandra said into the phone. “So, if you can, we want you to come back to work right away, like tomorrow.”

“Are you saying you fired Gene for sexually harassing me?” Deb asked.

“No, not exactly,” Sandra said. “But let me explain. First, I have a letter from him to you apologizing for the comments he made and a promise to stop.

“And, he’ll be disciplined,” she added.

“Oh, well what will his discipline be?” Deb asked.

“I’d like to keep that confidential,” Sandra told her. “That will just be between Gene and me.”

“What!” Deb gasped. “I can’t believe this. He makes my life miserable with his sleazy comments, and I’m supposed to be satisfied with his lame written apology and some mystery discipline.”

“Gene can be rough around the edges, everyone knows that,” Sandra said. “But we want to give him a chance to change and improve. He knows that if he makes this

mistake again, with you or anyone else, he’ll be out the door in a flash.”

Firm gets sued

“Well you know what ... that doesn’t cut it with me,” Deb said. “I don’t know how you can expect me to come back to work under these circumstances.”

Instead of returning, Deb sued the firm saying she was forced to quit because the company failed to get rid of her harasser in a timely fashion, and wouldn’t even reveal to his victim what punishment he would receive.

The company said it had dealt with the issue and given Deb reason to believe the harassing would stop. With all that, she should’ve come back to work.

Decision: The firm won. The court agreed the supervisor had brought the harassment to an end and was justified in keeping the discipline confidential.

Key: It always pays to take immediate and appropriate action with harassment.

Case: Breneman v. Famous Dave’s of America, Inc.

What you need to know:

You are not legally obligated to reveal details of discipline with an employee who has been victimized.

Still, it’s helpful to keep them in the loop.

- Be sure the victim understands repeat offenses will not be tolerated and will result in dismissal.
- Get the offender to acknowledge that he or she has acted inappropriately and will commit to stopping the offensive behavior.
- Follow up on any commitments you make to toughen the punishment for repeat offenses.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes. The company won when a judge dismissed Georgia’s case.

Georgia’s attorney argued that the fight she was fired for never would’ve happened if the company had taken action against Jesse when she first complained about him.

Firing Georgia was simply retaliation for her complaint, the attorney said.

But the court disagreed. It said Georgia didn’t file a sexual harassment complaint against Jesse, so the company was unaware of his behavior – there couldn’t be sexual harassment retaliation if no complaint existed.

The court went on to say that regardless of her issues with Jesse, Georgia violated company policy, so her firing was justified. Jesse was also

fired for his part in the fight, which was further proof Georgia’s termination was justified.

Delve deep into complaints

While the company came out on top, it could’ve avoided the lawsuit if it had looked deeper into Georgia’s first complaint. Even though she didn’t specify it was sexual harassment, some more questions on HR’s part could have brought the problem to light.

However, the company did the right thing by firing everyone involved in the fight – as its policy required.

Case: Jackson v. Kansas City Kansas Public Schools Unified School District.

EDITOR: RICH HENSON

ASST. EDITOR: RACHEL MUCHA

MANAGING EDITOR:
TOM D’AGOSTINO

PRODUCTION EDITOR:
AMY JACOBY

EDITORIAL DIRECTOR:
CURT BROWN

Subscriptions: 800-220-5000

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