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March 16, 2020

OUR TOP STORY

Worker sends insulting emails that get everyone in a lather

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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

The perils of offhand remarks

Railway pays \$350K for ageism

5 things to ask before saying yes

Dealing with poor performers

Worker feels left out and blames bias: What's boss's best move?

'Nobody likes you' – Was it just her difficult personality?

“Margarita, I told you very clearly not to send out any more of your insulting emails,” Supervisor Jane Russell said, “and so you go and write this!”

“That wasn’t meant for you,” Margarita said. “How’d you get a copy of it?”

“Never mind how I got a copy,” Jane told her. “Suffice it to say that if you send it out on the company’s email system, it might as well be meant for me, and everyone else.”

“You won’t listen to my complaints about my co-workers, so what else am I supposed to do?” Margarita said.

“People here won’t even talk to me

anymore,” she went on. “So I want to make sure there is a written record of my complaints about them.”

People don’t like you

“I’ve listened to you more times than I care to remember,” Jane said. “You’ve told me a thousand times that people don’t like you because you’re Puerto Rican.

“And you are right about one thing,” Jane added. “People don’t like you.”

“You are demanding and rude and insulting,” Jane said. “What do you expect

*Please see **Best move ...** on Page 2*

Sharpen Your Judgment

Religious accommodation: How far must you go?

HR manager Lynn Rondo couldn’t help noticing company attorney Eric Bressler’s emerald green tie as he sat across from her.

“Are you thinking about St. Patty’s Day?” Lynn asked him.

“You bet I am,” Eric replied. “It puts me in a good mood ... unlike this Roberta Sawyer lawsuit we’ve been dealing with.”

“Oh, I don’t envy you,” said Lynn. “I still can’t believe she’s suing. We were respectful to her and recognized that she had religious reasons for not getting a flu shot.”

Who’s being unreasonable?

“The vaccination was a job requirement, right?” Eric asked.

“Yes,” Lynn replied. “To accommodate her, we gave her the option of transferring to another department so she wouldn’t have to get the shot. Same salary, same benefits. But Roberta didn’t like the hours and turned it down.”

“Right, because she had a second job. I agree; that’s not our problem,” said Eric. “But what doesn’t look good is she’s claiming we didn’t try to give her a reasonable accommodation.”

“She’s the one not being reasonable,” Lynn said. “We tried to work with her, but she just wouldn’t budge. We had to let her go.”

Roberta sued for discrimination on the basis of religion. 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.

Best move ...

(continued from Page 1)

when you talk to people that way?”

“I expect you to see both sides of the story,” Margarita said.

“It’s hard for me to believe that ‘everyone’ is out to get you,” Jane said bluntly.

Dismissed promptly

“So then, why did someone post a poem about getting fired next to my workstation?” Margarita asked.

“There is no doubt in my mind that there are people here who would like to see you fired,” Jane said.

“And I can assure you that if you send out one more insulting email like this, you will be dismissed promptly.”

“I might as well be fired,” Margarita said. “I walked into the break room this morning and everyone in there got up and walked out.”

Honest mistake

Jane rolled her eyes.

“Last week, one of my co-workers called me Maria, even though she knows my name,” Margarita said.

“She said it was an honest mistake, and I’m sure it most likely was,” Jane said.

“And what about the time another co-worker told a customer

that if they want to live in this country they need to learn better English?” Margarita asked.

“She was reprimanded for saying that,” Jane said quickly.

A lively account

Then Jane added: “In the past few months you’ve sent out emails to managers and to co-workers that were negative, unprofessional and disrespectful. Don’t do it again.”

Margarita wrote up a lively and colorful account of her interaction with Jane, which included a few choice words for her colleagues.

Moments after she emailed it, she was fired.

She sued her former employer for national origin discrimination, claiming she was picked on by co-workers because she was Puerto Rican, and her supervisor did nothing to stop it.

The company said it investigated each of the claims, but found no evidence to substantiate them.

Decision: The firm won when a court dismissed the case. The court said while it was true the co-workers avoided contact with the employee, there was no evidence the actions were based on any illegal bias.

Key: The supervisor had every right to expect a professional level of conduct and to respond to any refusal to maintain such a level.

Case: Zayas v. Rockford Memorial Hospital.

What you need to know:

Supervisors often run into the challenge of uncooperative workers who blame bias for their shortcomings. When that happens:

- Alert both HR and your own manager about the situation.
- Be sure the employee’s concerns get a full and fair airing and investigation, just as if the person were a top performer who had no other behavioral issues.
- Depending on what you learn, take the appropriate action needed to remedy the situation. If bias is suspected, put a stop to it. If it’s an employee performance issue, there are proper ways to deal with that.

TEST YOUR KNOWLEDGE

Offhand comments: Why they should be avoided

Offhand comments are the bane of supervisors. Sometimes the comments were just intended to be jokes, but the jury didn’t laugh when the case was decided. To test your knowledge of when employees are pushing the limits, respond *True* or *False* to the following:

1. A predominantly male salesforce’s vulgar and frequent gross sexual comments couldn’t have created a sexually harassing hostile environment because no comments were ever made directly to the lone saleswoman who complained.
2. Most harassers claim they were “just joking” and didn’t intend to offend anyone. This is a surefire way to get a lawsuit dismissed.
3. If it seems like a dumb, childish and inappropriate stunt, it probably is and it could likely get your company into big trouble, too.

ANSWERS

1. *False.* In this real case, *Reeves v. C. H. Robinson Worldwide, Inc.*, the employer tried to defend itself by claiming the sales team had always acted this way and the female knew this when she took the job. The court rejected this, saying that once a person objects to illegal activity, the employer must put a stop to it.
2. *False.* Offhand comments may not be sufficient evidence to result in a verdict against an employer, but they are often enough to force a case to trial. That’s what happened in *Volossek v. Wisconsin Dept. of Agriculture*, where the judge ruled the comment “keep them barefoot and pregnant” was derogatory.
3. *True.* In *Dyset v. Whirlpool*, managers thought it humorous to post a sign saying “sexual harassment will not be tolerated, but will be graded on a 1 to 10 basis.” The offended employee got the last laugh, in court, when she won her lawsuit against her supervisor.

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.

TX plastic firm pays \$35K for sexual harassment

What happened: Element

Plastics Mfg., LLC, a plastics manufacturer based in Sugar Land, TX, violated federal law by subjecting a female employee to a hostile work environment and then firing her in retaliation for complaining about the sexual harassment.

The employee was subjected to sexually harassing comments, unwelcome touching, and other improper and sexually hostile conduct. After she complained about the harassment to her direct supervisor and a manager, she was terminated in retaliation for making the complaint.

Decision: Along with paying \$35,000 to settle the claim, the firm agreed to develop and implement policies and procedures to address illegal discrimination, harassment and retaliation, including complaint procedures and guidelines for investigating complaints of discrimination.

Cite: EEOC v. Element Plastics Mfg.

Norfolk Southern pays \$350K for age bias

What happened: Norfolk

Southern Corp., which operates a 19,500-mile freight railroad system in 22 states and the District of Columbia, refused to hire qualified individuals over the age of 51 for the position of special agent, a railway security position. A Norfolk Southern hiring official told one such unsuccessful applicant the company had an unwritten policy

of not hiring individuals older than 51 as special agents because it believed they would not work for Norfolk Southern for 10 years.

Decision: The railway agreed to pay a \$350,000 monetary award for lost wages and other damages for the applicants aged 51 and over who had applied for special agent positions over a five-year period beginning January 2014.

Cite: EEOC v. Norfolk Southern.

FL wellness firm pays \$27K for pregnancy bias

What happened: Azul Wellness,

LLC, an Orlando massage therapy company, required all pregnant employees to obtain a doctor's note, regardless of whether the employee was requesting any accommodation in her job duties, responsibilities or schedule.

It was the employer's position that providing massages might be a safety risk for pregnant women and their unborn children. When the employee expressed concern over having to submit a doctor's note, she was terminated on her next scheduled shift.

Decision: Along with paying \$27,000, Azul was prohibited from unlawful discrimination and from continuing to require a doctor's note from all pregnant employees. It also agreed to provide training for all management and HR personnel and post a notice with the details of this settlement.

Cite: EEOC v. Azul Wellness, LLC, dba Orlando Float.

STOP, LOOK, LISTEN ...

5 things to ask yourself before saying 'yes'

It seems just being insanely busy every day at work is the new normal.

Good employees are always tackling big projects and saying yes to more work, right?

But being over-extended can lead to burnout, which the Centers for Disease Control and Prevention now says is at epidemic levels, and of course, costly mistakes.

The challenge is a lot of hard workers can find it difficult to say no when they're asked to take on more.

Think, then answer

So how can you decide when to say yes and when to say no?

Leadership expert and coach Scott Mautz has a good system to help you determine whether you can actually take on the assignment.

Here are five questions to ask yourself:

What's really involved? We may try to kid ourselves, but things almost always take longer than we think. Understand the scope of what you're signing up for before saying yes. Think about how much time and effort the task will actually take — and it's better to err on the side of caution.

What's the cost of saying 'yes'? There might be more effort required than completing the actual assignment. For example, you might need to learn a new skill or get assistance.

Will taking this on serve my mission? Think about whether this task will help you contribute to your career goals. Does the assignment really matter? If it's a small, mundane task, it most likely isn't worth your time.

Is this on my 'to-do'n't' list? Are there specific things you try not to get sucked into? Is this one of those things?

Can I give a different 'yes'? If you can't do the task yourself, but want to help out the asker, suggest an alternate solution or co-worker to assist. This shows support without burdening yourself.

SUPERVISORS SCENARIO

They used to be friends, but now Supervisor must deal with employee’s poor performance

Casual comment among old friends lands boss in court

“Pretend I’m the customer, and I’ve just asked you to tell me more about this,” said Supervisor Linda Jones, holding up a power drill.

“What do you do next?”

“I told you this play-acting stuff is a waste of time,” George Shelton replied.

“I’m just trying to help,” said Linda. “You need to be more outgoing with customers and practicing will help.”

“I think I already know how to treat customers,” George said coolly.

After promotion, things changed

“I don’t understand,” Linda said, shaking her head. “We used to be friends.

“We took turns bringing in muffins and coffee every Friday.

“When I got this promotion, you gave me that nice, new briefcase.

“Now you act like you don’t even know me. What happened?”

“For one thing,” George said, “the only time you come to see me anymore is when you’re bringing me write-ups.

“But do you really want to know what’s bugging me?” George asked.

“I heard that wisecrack you made about the missing tools – you said if I would just tell my relatives to bring the tools back, everything would be OK.

“You wouldn’t say that if I was white.”

Joking around – or a slur?

“I was kidding,” Linda said. “You and I used to joke around like that all the time.”

George’s work failed to improve and despite Linda’s intervention, he was fired.

He filed a race discrimination complaint against the company.

Decision: The company won when a judge dismissed the case.

To prevail, a person needs to show in court that race was a motivating factor in a firing. Instead, there were enough indications – between the supervisor’s efforts to help and the write-ups the employee received – to show it was a poor performance issue.

Case: Culbert v. Hilti, Inc.

What you need to know:

Innocent humor is a welcome element in many workplaces.

But how can supervisors keep it from taking an ugly turn – into a courtroom?

- Racial jokes or slurs can be a form of harassment, which is discrimination under the law.
- Simple teasing, offhand comments, or isolated incidents that aren’t extremely serious are generally acceptable.
- Behavior must be frequent or severe enough to create a hostile environment.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes. The company won when a court dismissed the religious discrimination case.

Roberta’s attorney argued the transfer wasn’t a reasonable accommodation and the company showed bias against her faith by firing her.

But the court ruled that the company satisfied its duty to accommodate her by offering a new position, which had the same pay and benefits as her current job.

The Civil Rights Act requires employers to make accommodations when it comes to an employee’s religious beliefs.

However, the court said, the employee must make an effort to cooperate to achieve an accommodation that is reasonable.

Because Roberta declined to take the accommodation, there was a legitimate, non-discriminatory reason for her dismissal.

Employer has a say in what’s reasonable

When it comes to religious beliefs at work, employers aren’t restricted to the accommodation the employee prefers.

Both parties must agree on one together through a fair interactive process.

In this instance, since the employee wasn’t forced into choosing between compromising her faith or an adverse employment action, it wasn’t religious discrimination to terminate her for refusing the flu shot.

Case: Horvath v. City of Leander, TX

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