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OUR TOP STORY

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7 questions to ask yourself before deciding whether to fire someone



INSIDE

Talking your team through a crisis

Chili's: \$150K for sex harassment

Social distancing when on-site

Cyberbullying lands boss in legal trouble

How casual remarks about a firing landed this supervisor in court

A comment about a fired employee turns into defamation claim

“You must be the new hotshot trouble-shooter,” team leader Joe Kerr said.

“I don’t know about hotshot anything,” Supervisor Ann Delaney said. “But I guess I am here to tighten the ship.

“And you must be Joe,” she said with a smile and an outreached hand.

Joe hesitated before taking Ann’s hand. He shook it firmly.

“We need to talk,” Ann said. “Can you stop by after lunch today?”

“Sure, I guess you want to know how this place really operates,” he said with a nod.

“Well, there are a few things we need

to discuss. But yes, that would be helpful, too,” Ann said.

Don’t like your style

“I’ve talked with people on your team and I don’t like what I’ve been hearing,” Ann told Joe when they met.

“That depends on who’s talking,” Joe said. “Can’t please all the people.”

“Let me cut to the chase,” Ann said. “Your management style isn’t working anymore.”

“What do you mean by that?” he asked.

Please see Casual remarks ... on Page 2

Sharpen Your Judgment

Transferred after seeking an accommodation

“Hi, Lynn. Got a minute?” HR manager Lynn Rondo looked up from her desk to see company attorney Eric Bressler standing at her door, two coffees in hand.

“You’re bringing me coffee?” Lynn asked as he set down the cup on her desk. “That means you’ve got some bad news for me.”

“A little, yes,” Eric said as he sat down. “Gabrielle Solis is suing us for retaliation. She’s saying her transfer was a punishment for requesting an ADA accommodation.”

Same hours, pay

Lynn sighed and took a big sip of her latte. “Gabrielle’s transfer was not retaliation!”

“Remind me what happened,” Eric said.

“Gabrielle was having arthritis and carpal tunnel issues,” Lynn said. “She needed some lifting restrictions, which we gave to her.”

“How’d she end up at our other location?” Eric asked.

“A few months after her accommodation request, we transferred her due to restructuring,” Lynn explained.

“She had the exact same hours and same pay. Her new office was only three miles away from the old one! How could this be considered retaliation?”

When Gabrielle sued for retaliation for an ADA accommodation request, 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.

Casual remarks ...

(continued from Page 1)

“I’ve been here for years and people have always gotten along with me.”

“Some people have said you mistreat some of your team members,” Ann said. “They’re afraid they’ll get fired if they complain about you.”

Common complaint

“That’s just not true,” Joe said.

“I’ve talked with half the people on your team already,” Ann said, “and your style was a common complaint.”

“So then, who complained?” Joe asked. “I’m sure Rich was one because I wrote him up last week.”

“Ann, trust me, you can’t believe the stuff these folks will try to tell you.”

“You know I can’t reveal who said what about you,” Ann replied.

“So next you’ll tell me I need to change,” Joe said.

Rushing things?

“I think we’re past you changing,” Ann told him. “I’m going to let you go.”

“You can’t fire me like this,” Joe protested. “You show up one day, talk to a couple of disgruntled employees and I’m fired? Isn’t

that rushing things a bit?”

“I see no need for an improvement plan,” Ann said. “A zebra can’t change his stripes.”

Violated code of conduct?

Later that afternoon, Ann called a staff meeting.

“I can’t give you many details,” she announced, “but I can say Joe violated our code of conduct.”

Over the next few days word got back to Joe about what Ann had said.

He was furious.

He felt she had no business telling people he violated the code of conduct.

Only the worst kinds of offenses meet that level.

Joe hired an attorney and sued the firm for defamation.

The company didn’t deny what Ann had said, but argued she was within her rights to communicate the situation to Joe’s longtime staff.

Decision: The firm lost when a

judge ruled the case should go to a jury, which would decide the outcome of the defamation case.

The court said that “while her comments may have been in good faith, the fact remains that they were made to employees who had no duty” that would’ve required them to need to know the alleged details of their team leader’s dismissal.

Case: *Menovcik v. BASF Corp.*

What you need to know:

Walking into a new job setting can be tricky for even the most experienced managers.

To get off on the right foot and stay there, it helps to:

- Make HR your first stop when there’s a problem. After all, it might be your last stop, too.
- Make certain you know what the problem is before you try to fix it.
- Play it close to the vest and keep things confidential. For managers in a new setting, you can’t always be sure who to rely on for good information. Therefore, the fewer details you share initially, the better for everyone.

TEST YOUR KNOWLEDGE

Talking your employees through a crisis: 4 keys

COVID-19 has turned the workplace on its head.

There are no magic words to ease everyone’s fears, but here’s what leadership experts suggest when it comes to talking your people through a crisis.

To test your knowledge of handling stressed employees, respond *True* or *False* to the following:

1. When people are stressed it’s best to not ask a lot of prying questions and give them space.
2. It may seem counterintuitive, but uncertainty is a breeding ground for rumors.
3. In times like these it’s best to keep people preoccupied and focused on the little tasks they can accomplish each day.
4. People want leadership so you should be out cutting new trails.

ANSWERS

1. *False.* Experts say it’s important for supervisors to monitor their employees’ moods and let them know you’re there if they need to talk. A lot of people won’t voluntarily tell you if they’re struggling — but if you start asking regularly, they’ll open up.
2. *True.* In times of uncertainty, rumors can spread like wildfire. Try to stop this misinformation as quickly as possible by addressing it head on.
3. *False.* It’ll be hard to get your people to focus on completing mental tasks right now — so try to turn their attention to the more important, meaningful work they do.
4. *False.* No one can predict what will happen right now, so don’t try to. Instead, take things one day at a time, and let your staff know what’s coming for them in the immediate future. Speculating won’t help anyone.

Answers to the quiz:

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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.

Chili's to pay \$150K for sex harassment claim

What happened: Five female servers and hostesses at a Chili's restaurant in Cañon City, CO, were subjected to sexual harassment, including pervasive sexual comments and innuendo, between 2015 and 2017. The EEOC charged that the restaurant failed to take preventative or corrective action when employees complained about the harassment and that some women who could not tolerate the harassment were forced to resign. The EEOC also alleged that management took retaliatory action against some of the female employees who complained about the harassment, including a reduction in scheduled hours.

Decision: Along with paying \$150,000 to settle the claim, Chili's agreed to provide training to all managers, supervisors and workers. Training for managers will focus on sex discrimination and retaliation as well proper methods for handling employee complaints.

Cite: EEOC v. Brinker Restaurant Corporation d/b/a Chili's Grill & Bar.

Firm to pay \$225K for ethnic discrimination

What happened: Champion Fiberglass, Inc., of Houston, engaged in a pattern or practice of intentionally failing to hire or consider non-Hispanic applicants and job seekers for laborer positions. The EEOC also alleged that Champion impermissibly

maintained a preference that its laborers speak Spanish and engaged almost exclusively in word-of-mouth recruiting, in violation of EEOC regulations.

Decision: In addition to paying \$225,000, Champion is prohibited from maintaining a Spanish-speaking preference and from engaging in word-of-mouth recruiting as its sole means of recruiting for the laborer position.

Cite: EEOC v. Champion Fiberglass, Inc.

Insurance firm pays \$49K for disability bias

What happened: A senior processing clerk for almost 23 years at American Security Insurance Company, Duluth, GA, requested permission to work from home as an accommodation for complications with Type 2 diabetes. Despite granting the accommodation request, however, the processing clerk's supervisor constantly chastised her for teleworking, criticized her performance without basis, and ultimately fired her.

Decision: Along with paying \$49,000, the firm agreed to distribute its anti-discrimination policy to all employees, provide equal employment opportunity training to key management and supervisory officials, and report to the EEOC on its compliance with the consent decree, including how it will handle future discrimination complaints in its Duluth facility.

Cite: EEOC v. American Security Insurance Co.

STOP, LOOK, LISTEN ...

Effective social distancing for employees on-site

If your business keeps employees on-site – you must keep them safe.

Here are tips to help them perform critical roles while staying physically and mentally healthy:

Make space. On-site employees should follow the six-foot rule and all other CDC guidelines while in the workplace. Post reminders about the six-foot rule in areas where they work and congregate.

Start a no-visitor policy. Only let authorized employees in the office. Employees who don't need to be in the facility shouldn't be permitted to drop in to pick up items, work for a short time or any other reason. Try to restrict deliveries – from essential supplies to lunch drop-offs – to a single entrance where necessary sanitizing can be done.

Meet remotely on-site. When a group of on-site employees must meet – for shift huddles, collaborative endeavors, brainstorming, etc. – have them use the same tools remote employees use to meet. Make sure they have the technology – laptops or their own personal devices – to log on to online meetings. Give them access to apps such as Zoom, Google Hangouts, GoToMeeting and Skype For Business. They can sit individually at their workstations, separate meeting rooms or outside to stay socially distanced while collaborating.

Schedule differently. Try flexible work hours and staggered or rotational shifts so fewer people are in the office at one time, yet the work gets accomplished. Use the time between shifts to sanitize workstations and communal areas.

Redesign workspace. Where possible, create partitions between employees. Raise cubicle walls. Add plexiglass dividers in common areas, such as the break room, so people can sit together (six feet apart, of course) and interact safely. In more open-space areas, such as manufacturing and warehousing facilities, mark six-foot positions with brightly colored duct tape so employees always have a sense of a safe distance to maintain from each other.

SUPERVISORS SCENARIO

Worker complains of online bullying by her co-worker; what's boss's responsibility?

Did supervisor do enough to prevent cyberharassment?

HR manager Jay Bartello pointed at the computer screen and said, "That's what Jessica's been complaining about."

Supervisor Steve Arnold looked over Jay's shoulder and nodded.

"I know, I know, I've seen this blog before," Jay said.

"Some of my employees have posted some nasty comments about her."

"So isn't it about time we stopped it?" Jay asked. "Look here. Someone called her a 'no-good, lying #\$\$&#!'"

Steve rolled his eyes in frustration.

"I've talked to the people responsible and told them to cut it out," Steve said.

"But I mean, it's all taking place outside of work," he added.

"And they're not using company computers – we checked on that."

"Still ..." Jay sighed.

Steve responded: "How far am I supposed to go to control something like this? I don't get involved in employees' personal lives."

"Well, Jessica wants it stopped," Jay answered.

Do something

"She's pretty upset about it," he added. "She works for you. They work for you. It seems as if we should be able to do something."

After Steve refused to press the matter any further with his employees, Jessica sued the company for failing to stop what she considered a case of harassment.

Decision: The company lost. The firm argued that what employees did on their own time with their own computers was outside the authority of an employer.

But the court said employers have a duty to stop employee-on-employee harassment, especially in cyberspace. If you get a complaint of this type, courts expect you to investigate and take appropriate action, including disciplining or even firing the offenders, just as you would with any instance of harassment.

Case: Espinoza v. Orange County, CA.

What you need to know:

Employees are demanding that employers put a stop to harassment when they have the means to do so. That means the location where harassment takes place doesn't change the responsibility.

The simple facts are that if:

- an employee complains about harassment by co-workers and
- management acknowledges that harassment is taking place, then
- management is obligated to take action to stop the harassment.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes. The company won when a court dismissed Gabrielle's case.

Gabrielle's attorney argued that the transfer was retaliation for Gabrielle's ADA accommodation, since it happened mere months after her request. Transferring Gabrielle to another location proved the company didn't want to deal with her restrictions, her attorney said.

But the court disagreed. It said the company initially granted Gabrielle's accommodation request with no issues. Additionally, her subsequent transfer couldn't be seen as retaliation because she received the same hours and salary.

The new location was very close to the old, too. Almost nothing changed for Gabrielle after

the transfer – the court deemed it to be non-retaliatory, and due to company restructuring only.

Be aware of potential adverse actions

In this case, Gabrielle's transfer wasn't deemed an adverse employment action, due to the same hours and pay. However, this could've gone a different way if Gabrielle's new job was measurably worse than her old.

When dealing with an ADA-protected employee, it's essential to be mindful of the timing of any transfers or disciplinary actions – anything that a court could consider to be an adverse action.

Cite: Lewis v. Clark County School District.

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