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November 2, 2020

OUR TOP STORY

We are all on edge at times, but threats can never be tolerated

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

Tracking changes during COVID-19

Walmart pays \$20M for bias

5 questions to stop asking

Boss investigated bias, sued anyway

Addressing bad behavior when an employee crosses the line

Worker made a threat but said he didn't mean it

“The payroll system is down again,” IT manager Jerry Smith said.

“Oh no, not AGAIN!” Kyle Watson said loudly. “Do those idiots even know what they’re doing over there?”

Jerry held his tongue and wondered how much longer he could put up with Kyle’s erratic temper.

“If we all want to get paid, we’d better get things up and running quickly,” Jerry said with a smile.

“Look,” Kyle shot back. “I’m still trying to get the customer service system working properly. One thing at a time, OK?”

Jerry took a deep breath.

“You’ve been on edge lately,” Jerry said, “and I’m not sure why. But it’s affecting your attitude, and everyone else’s.”

Doing more, with less

“I only have two hands,” Kyle said sharply. “And no, I don’t want to talk about it. It won’t help.”

“We’re all doing more with less,” Jerry said, trying to show some understanding.

“We’re busy, and usually that’s a good thing,” Jerry added. “Sometimes we’re too

*Please see **Bad behavior...** on Page 2*

Sharpen Your Judgment

This difficult employee sees bias everywhere

“I called this meeting because it’s very important,” Supervisor Pat Griffin said. “And here you are, 15 minutes late.

“Just more of the same ...”

“Sorry, I had a quick phone call I had to make,” Jennifer Butler said.

Pat shook his head.

“Oh never mind that,” he groaned. “You’re here, so let’s get on with this. I’m suspending you for five days, beginning now.”

“What!” Jennifer cried out.

“You have been far too disruptive,” Pat told her. “You don’t follow assignments. You complain every time you’re asked to do a job in a different area. You’re insubordinate.”

“You’re only suspending me because I complained about gender bias,” she said.

No basis

“We’ve been over that,” Pat told her. “This company investigated your claim fully and found no basis for gender bias.”

“Or course you didn’t,” Jennifer said. “You’re just covering your tracks. Just like you cover for the men around here.”

When Jennifer was suspended, she hired a lawyer and sued the firm for retaliation. She claimed the suspension was in response to her earlier claim of gender bias.

The firm said her claim had no merit and asked the court to dismiss it. Did the employer 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.

Bad behavior ...

(continued from Page 1)

busy. But it's our job to keep things running. I want you to get over to Payroll and see what needs fixed."

Kyle let out a loud grunt. He lifted the keyboard from his lap and thumped it down hard on his desk as he stormed away.

Ten minutes later, when he hadn't heard back from Kyle, Jerry headed over to Payroll.

He found Kyle in a lather, screaming nonstop at an employee.

"If you don't like the way I'm going about it, you know where the parking lot is," Kyle was yelling.

"We can take this outside."

Jerry stepped in quickly.

"That's enough of this," Jerry said. "Kyle, come with me."

When the two got to a private spot, Kyle began to explain himself.

'Nuke this place'

"Nobody wants to do what I tell them to do," Kyle said.

"But when their computer quits working, who do they call? Me!"

"That's our job," Jerry offered.

"Well, I'll tell you what, Jerry," Kyle said. "I'm so fed up with everything I'm ready to nuke this place and everybody in it."

That comment made Jerry extremely concerned. He sent Kyle home for the day, and even made sure to walk him to his car.

Empty threats?

Later that day, Jerry called Kyle to tell him he'd been fired for threatening violence.

"I wasn't serious about hurting anyone," Kyle protested.

But Jerry held his ground. "The folks in Payroll didn't take it as a joke." Jerry said. "They were very concerned about what you said, and frankly, so was I."

After firing Kyle, the company got a court order banning him from returning to the property.

But Kyle wasn't done with his employer yet.

He fought back.

He hired an attorney and sued for wrongful discharge, claiming the firm overreacted to what he claimed were "empty threats."

Decision: The firm won when a court dismissed the wrongful discharge claim.

The court said the company had every right to fire the worker for making clear threats of violence.

And it found the firm did the right thing seeking the restraining order. Further, it said the company could've been held negligent if it failed to terminate the worker, and he did follow up on his threats.

Case: *Edwards v. USS Posco Industries, Inc.*

What you need to know:

We all get frustrated and even angry from time to time. But that doesn't give anyone the right to threaten other people.

If this happens on your watch:

- Contact security or police immediately if you feel the situation warrants it.
- Give the person the time and space to calm down.
- Advise your organization, and especially HR, about what has happened.
- Check in with those who felt threatened to be sure their needs are met and to see if there are other actions you might take to help make them feel safer.

TEST YOUR KNOWLEDGE

Keeping track of workplace changes during COVID-19

So much has changed with work since the pandemic, its hard to keep track. And with so many changes coming so quickly in so many different areas, you don't want to make a critical mistake that could cost your company a lot of money.

To test your knowledge of key things to keep track of during the pandemic, respond *True* or *False* to the following:

1. Now is not the time to be worried about things like annual performance reviews. Instead, postpone them until this passes.
2. It's probably a good idea to avoid terminations altogether. Even with dismally poor performers, now's an awful time to let someone go.
3. If an employee who was working remotely files for overtime payment, even if you were unaware of it, you may still be required to pay the OT.

ANSWERS

1. *False.* Now is the perfect time for supervisors to assess their employees in adaptability and flexibility. Consider especially which workers demonstrate the ability to multitask and handle pressure, and who remains calm when faced with challenges or lack of resources.
2. *False. Ask A Manager* blogger Allison Green advises all employers to be understanding and more flexible than usual during the pandemic. But if you have a problem employee who wasn't even producing good work beforehand, termination is probably necessary.
3. *True.* You are required to pay employees for all work performed, even if it wasn't directed by you. Employees are expected to find out "reasonable diligence" to find out if employees are working outside of their normal hours, even remotely. This means having staff track and report all hours worked.

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.

Walmart hit for \$20M for hiring discrimination

What happened: Walmart Inc., of Bentonville, AR, conducted a physical ability test (known as the PAT) as a requirement for applicants to be hired as order fillers at Walmart's grocery distribution centers nationwide. The EEOC said the PAT disproportionately excludes female applicants from jobs as grocery order fillers.

Decision: Walmart agreed to halt all physical ability testing currently being used for purposes of hiring grocery distribution center order fillers. The retail giant is also required to pay \$20 million into a settlement fund to pay lost wages to women across the country who were denied grocery order filler positions because of the testing.

Cite: EEOC v. Walmart, Inc.

McDonald's franchise out \$69K for religious bias

What happened: Chalfont & Associates Group, Inc., owner of 11 McDonald's restaurants in the Greater Orlando Central Florida area, refused to hire a Jewish applicant as a part-time maintenance worker because, due to his religious practices, he would not shave his beard to comply with McDonald's "completely clean-shaven" grooming policy. The stated purpose of McDonald's grooming policy was to convey an "image of wholesomeness" to the public.

The applicant offered to wear a beard net as a solution but was denied, the EEOC said. Also,

after the applicant reported religious discrimination to EEOC, McDonald's responded by revising its applications to expressly require all applicants to certify that they would comply with the company's "completely clean-shaven" grooming policy prior to being hired.

Decision: McDonald's agreed to pay \$69,555 to settle the claim.

Cite: EEOC v. Chalfont & Associates Group, Inc.

Sports apparel firm ASICS pays \$49,650 for bias

What happened: A temporary staffing agency assigned a worker with hearing and speech disabilities to work at athletic apparel manufacturer ASICS America Corp.'s warehouse distribution center in Byhalia, MS. After the worker completed an orientation meeting, members of ASICS's human resources department told her the company could not employ her due to her disabilities and failed to engage in the interactive process with the worker to determine whether she could perform the essential functions of the position.

Decision: ASICS will pay the former employee \$10,000 in back pay and \$39,650 in compensatory damages, and revise its written policy on disability discrimination to explain the process of how to request a reasonable accommodation, and then disseminate that policy to all employees to sign and return to ASICS's HR department.

Cite: EEOC v. ASICS America Corp.

STOP, LOOK, LISTEN ...

5 interview questions it's time to stop asking

Hiring has shifted a lot in recent years, and one thing that's changed is the candidates have more control. With more options, some applicants have the luxury of being picky.

This means employers have to really work on dazzling their candidates and improving the overall experience of the interview.

What not to ask

One thing that's essential to get right? The questions. If your questions are off, you could end up losing a great prospective employee.

A study by Resume.io reveals candidates' most hated questions.

Here are the things you'll want to avoid asking:

1. "Convince me to buy this pen."

Nothing causes more stress than being forced to perform without warning. This type of on-the-spot challenge can rattle even the most prepared and talented candidate.

2. "Where do you see yourself in five years?"

Not only do many candidates feel uncomfortable divulging goals and plans to a stranger, but this question is posed to women more often than men, which raises unconscious bias issues.

3. "Why should we hire you?"

This question causes candidates unnecessary stress, since the purpose of the entire interview is for the employer to gauge whether they want to hire the candidate.

4. "Describe a time you failed and how you recovered."

People want to showcase their best sides in interviews, and this one can be tricky to spin in a good light. It's best to skip it.

5. "Why do you want this job?"

Often, candidates want the job simply because they have bills to pay. This question makes many applicants uncomfortable, and it forces some to come up with a lie.

SUPERVISORS SCENARIO

Worker tells you you're biased but doesn't want an investigation: What do you do now?

When doing the right thing, legally, makes all the difference

“You’ll be hearing from HR about your complaint against me,” Paul said. “I decided it’s best to let them handle it.”

“Wait! What? You went to HR?” Elaine said. “But I asked you NOT to do that!”

“I really didn’t have any choice,” Paul replied. “Once you accused me of showing favoritism to men, I had to report it.”

“I did accuse you. I said it seems you give more raises to men than to women,” Elaine said. “And I also said I think we can work this out. Why did you break my confidentiality on this?”

Decisions questioned

“Yes, that’s what you said when you complained to me,” Paul said. “But when someone accuses me of bias, I have to go to HR to let them know what’s going on.

“I’m sure they will interview you.”

“But it just didn’t have to be this way,” Elaine insisted. “You’re getting too worked up because I questioned some of your decision-making.”

“I already explained my reasoning,” he

said. “I’m willing to stand by my decisions, so we’ll let HR do an independent look and let the chips fall where they may.”

“This is just your way of humiliating me,” Elaine said. “You watch, now I’ll be branded as a troublemaker.”

“If you’re going to accuse me of gender bias, you’ll need to back it up,” Paul said.

Rather than go through a full-blown investigation, Elaine quit and sued. She charged Paul went forward with an investigation to make things difficult for her, creating a hostile work environment.

The company argued the supervisor was obligated to report the complaint and the company had to investigate.

Decision: The firm won when a judge dismissed the case and agreed a charge of illegal bias warranted an investigation.

Key: There really is no such thing as a casual or informal bias complaint.

If an employee makes such a charge against you or anyone else, it’s your legal obligation to report it.

Case: Nagle v. Risk Management Association.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes, the company won when a federal court tossed out the lawsuit, an action that was upheld on appeal.

The employee had claimed, with little evidence, that she was the victim of gender bias because her job assignment was changed.

The employer hired an outside investigator, who concluded there was no evidence of bias.

Then, when she was suspended for missing assignments and being insubordinate, the employee claimed that was illegal retaliation.

But the court could find no evidence of bias because, in the judge’s words, there simply was none to be had.

“This Court must also abide by its affirmative

obligation to prevent factually unsupported claims and defenses from going to trial,” the court wrote in its opinion.

“The mere fact that a new job assignment is less appealing to the employee . . . does not constitute adverse employment action.”

Bogus claims

Some employees can be a handful and challenge all your managerial skills.

But when you stick to sound, documented reasons for your personnel decisions, that will make it far less likely that an employee can get a bogus bias claim to stick.

Case: Passwaters v. Wicomico County.

What you need to know:

If an employee levels a bias charge deal with it in a straightforward manner:

- Inform the employee, probably in writing, that you recognize a charge has been made against you, or someone else.

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Statement of Ownership, Management and Circulation of *Supervisors Legal Update*. Published semi-monthly by Progressive Business Publications, 370 Technology Drive, Malvern, PA 19355. Publisher is Progressive Business Publications; editor is Rich Henson; owner of 1% or more of the stock of Progressive Business Publications is American Future Systems, all of Malvern, PA. The average number of copies of each issue sold and distributed to paid subscribers during the 12 months preceding October 2020 was 15,558. There was no distribution through dealers or news agents. Actual number of copies of a single issue published nearest to filing date: 15,558. Complimentary copies issued: 0. Office use, left over and spoiled: 162. Statement signed and certified to be true by Kamil Yakubov, Chief Financial Officer.

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