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7 questions to ask
yourself before deciding
whether to fire someone



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**Was age a factor
in employee's
dismissal?**

Worker's refusal to follow dress code lands her boss in court

Intentions were good – but were the words all wrong?

“Sharon, I want you to put your blazer on,” Supervisor Bill Lilly said. “Rules are rules, and no one is excused.”

“But I don’t have my blazer,” Sharon said to him.

“Not a problem,” Bill said, without skipping a beat. “Here, you can wear this one.”

He handed her a khaki blazer he’d kept on a hanger in his office for the past month, right after the company had initiated the new dress code requiring all female employees to wear blazers, and men to wear khaki sports shirts.

“Ahhhhh, I don’t know,” Sharon said.

“Then go home and get your own and put it on,” Bill told her.

“I never bought one,” she confessed.

Not cheap

“Then I expect you to buy one tonight and to be in here bright and early tomorrow morning, wearing your brand new tan blazer!”

“Got it?” he emphasized.

“I’m not buying a blazer,” Sharon protested. “First off, it’s gender

Please see Dress code ... on Page 2

Sharpen Your Judgment

Did boss violate ADA by firing absent worker?

“Good morning, Jada,” Supervisor Amy Barnett said into the telephone.

“I was just now checking my voicemail and got your message from earlier this morning that you won’t be in again today,” Amy said.

“Yes, I hate to have to keep calling out like this,” Jada told her. “But I really have no choice.”

“My arm is slow to heal and my doctor won’t release me to drive until next month, so I’m kind of stuck for now.”

“I understand,” Amy said.

“But this does present a real problem,” she added. “First, since your accident, you haven’t been physically able to do your job.

“And now, it appears as though you’re not

even able to get yourself in here.”

“Oh, this won’t go on forever, and I can probably find a ride,” Jada said. “If you can be patient, I’m sure I’ll get my clearance to drive next month.”

Hire a replacement

“I’m afraid next month will be way too late,” Amy said. “We have a lot of work to get done now, and frankly, I think I’ve been patient enough. I’ve decided to let you go and hire a replacement.”

Jada was shocked by her sudden dismissal, so she consulted with an employment law attorney who sued her employer for violating the Americans with Disabilities Act.

The firm tried to get the lawsuit dismissed. Was it successful?

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.

Dress code ...

(continued from Page 1)

discrimination to make only women wear jackets,” she said.

“And, those things aren’t cheap, either!”

“You know the company has agreed to help defray the cost,” Bill reminded her.

“You only need to buy one first and bring in your receipt.”

Too unfair?

“That’s just not going to happen,” Sharon said, defiantly.

“The men here can walk around in khaki sports shirts, but all the women have to wear jackets.

“That’s just way too unfair.”

“Look Sharon,” Bill said, “all the men here have to wear the same uniform, blue pants and khaki sports shirt. And all the women have to wear the blue pants and khaki jacket.”

Cover their what?

“Why is that, anyway?” she asked. Bill smiled.

“If I don’t wear a jacket, the only that hangs out is my gut,” he said.

“But let’s face it, it’s a man’s world, and women need a jacket to cover up their boobs,” he said. “And frankly, the jacket covers your rear end, too.”

“Now, I expect to see you in

here tomorrow wearing your khaki jacket,” he said.

Sues for bias

True to her word, Sharon showed up for work the next morning without her jacket.

Bill tried to defuse the situation by again offering her the extra jacket he kept in his office.

When she declined to wear it, he fired her.

Sharon hired an employment law attorney and sued the company for gender bias.

She said making women wear jackets was discriminatory and Bill’s remarks about “boobs” and “rear ends” were proof of that.

The firm argued that the dress code was not discriminatory because it required all

employees to purchase specific types of clothing and imposed financial burdens on both sexes.

Decision: The company lost when a court sent the case to trial.

The court found that the supervisor’s comments suggested that sex may have played a role in the decision to implement the dress code. Therefore, the court said, the dress code might constitute disparate treatment on the basis of sex, and a jury should hear the case.

Case: *Rohaly v. Rainbow Playground Depot, Inc.*

What you need to know:

Managing employee dress and appearance can be legally tricky if not done correctly.

The EEOC says dress codes should:

- be applied equally to men and women
- be related to the job and be a reasonable requirement
- allow employees to follow their cultural and religious beliefs, and
- be fair to people with disabilities.

If a dress code does not meet these requirements, it may be discriminatory.

TEST YOUR KNOWLEDGE

Dealing with disabled employees – the right way

The Americans with Disabilities Act sets out strict guidelines for how you must treat disabled employees.

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

1. You discipline an employee for being repeatedly late for work. Later, for the first time, the employee tells you – and proves – he has a disability that caused the tardiness. You must then rescind the earlier discipline.
2. As soon as an employee provides the documentation to prove he or she is disabled, you must lower that employee’s performance standards to accommodate the disability.
3. The amount an employer must spend to accommodate a disabled employee (such as providing a special monitor for someone who is visually impaired) is determined by the company’s financial resources.

ANSWERS

1. *False.* If an employee discloses a disability after an infraction, you can rescind the discipline as a measure of goodwill, but you are not obligated to do so.
2. *False.* Supervisors are not obligated to lower performance or production standards for a disabled person. You can and should expect a disabled employee to perform at the same level required for all employees in the same job.
3. *True.* While rulings tend to be on a case-by-case basis, the courts generally rule that what a company must spend on an accommodation is in keeping with the financial resources of the organization. Generally, the larger the company and the greater the resources, the more the company is expected to expend to reasonably accommodate a disabled employee. However, there are no set minimum or maximum levels.

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.

Army hotel pays \$60K to settle disability lawsuit

What happened: PML Services, LLC, which operates the IHG Army Hotel at Fort McCoy, WI, fired an employee with epilepsy after she experienced a seizure at home after work.

The EEOC alleged that the employee, who had worked for the privately run hotel for several months, called her supervisor to ask for two days off from work to recover from the seizure.

When she returned to work, the employee's supervisor and the hotel's manager fired the employee, citing the fact that her disability-related absences occurred within her probationary period.

Decision: Along with settling the case for \$60,000, PML agreed to train employees on the ADA; report to the EEOC about reasonable accommodation requests from employees; and develop an acceptable policy emphasizing that employees with disabilities who are in their introductory period are entitled to medical leave as a reasonable accommodation.

Cite: EEOC v. PML Services, LLC.

Dillard's stores out \$900K for racial discrimination

What happened: Department store chain Dillard's, Inc., of Little Rock, AR, failed to post supervisory and management positions at its retail locations nationwide and failed to promote African American employees into those positions.

Decision: Along with settling the

EEOC lawsuit for \$900,000, Dillard's agreed to develop written promotion policies for its stores nationwide; post supervisor and manager vacancies; provide anti-discrimination training; and dedicate an email address and telephone number for employees to address complaints based on failure to promote based on race.

Cite: EEOC v. Dillard's, Inc.

Restaurant group hit with sexual harassment suit

What happened: A Cincinnati-area restaurant group subjected a female employee to unwelcome and offensive sexual harassment, including an offer of money in exchange for sex.

The harassment culminated in a sexual assault of the employee and therefore became so intolerable that the employee was compelled to quit.

Decision: The settlement requires payment of \$75,000 to the harassment victim; a letter of apology from the business owners to the harassment victim; implementation of record-keeping and anti-discrimination policies and procedures; creation of a telephone hotline for employee harassment complaints; and training for all employees, including management and owners, on Title VII and its prohibition against harassment in the workplace. The companies must also establish robust investigation procedures and report all harassment complaints to the EEOC.

Cite: EEOC v. 3501 Seoul, LLC, SushiNation, LLC, The Korea House, LLC.

STOP, LOOK, LISTEN ...

Measuring engagement: It's all in how you ask

Regardless of how, when and where you measure employee engagement, you want to ask great questions.

That's especially important with so many people working remotely.

Below are 13 great questions you can ask to help you rate employee engagement.

While the questions are good, remember: It's all about the answer!

The questions come from LeeAnn Renninger, PhD, Co-CEO at Life Labs Learning:

What challenges do you experience in comparison to when you worked in the office?

Can you tell us what you like best and least about working remotely?

What are the high and low points in a typical day?

Do you know of equipment or process improvements that would make things 10% better?

How do you find remote work equipment and technology in comparison to when you worked on site?

What technology issues have you encountered?

What would your ideal workstation be?

What do you do to take breaks/recharge? How would you rate your ability to take breaks and recharge while working from home?

Are you able to fully disconnect when on vacation or at the end of the day?

Have challenges from your previous setup evolved, vanished or increased?

What have you learned moving to remote work?

Are there ways to make things easier?

What benefits/advantages does remote work have compared to those in the office?

SUPERVISORS SCENARIO

She claims her supervisor mistreated her because of her age: Did boss have an answer?

Employee sues for bias after she got a layoff notice – instead of a bonus

“Rachel, is it really too much to expect you to smile and say ‘good morning’ to me?” Kim Farley asked her supervisor.

“Hi Kim, sorry,” Rachel said, not bothering to even look up as she walked past.

“Excuse me!” Kim said, louder.

Rachel stopped and turned.

“I have a list of things you’ve done to me that prove you treat me differently because I’m older,” Kim said, “and this is one of them.”

“Look Kim, we don’t have to be friends, so let’s not pretend,” Rachel said. “But OK, tell me why you think I’m treating you differently than the others.”

“You’ve denied me the training I need to get a promotion,” Kim said.

“We’ve been over this,” Rachel said. “And for the last time, you’re not qualified for that training.”

“You don’t have the experience and you don’t have the educational background you’ll need to get through that training effectively. I’ve told you that.”

“Well, that’s what you say, but it all fits,” Kim said. “It also explains why you denied me a year-end bonus.”

Job gets automated

“No one got a bonus this time, or very, very few people did,” Rachel said. “Things are tight.”

Not long after, Kim was let go during a round of layoffs

Rachel explained to Kim that her job was being automated, but Kim was suspicious.

She hired an attorney and sued her employer for age bias, claiming her poor treatment by her supervisor was driven by age bias.

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

The judge agreed Kim “didn’t have the necessary educational background” for the promotion, and that “bonuses were non-existent for many employees, including those in positions similar” to Kim’s.

Case: Malatesta v. Credit Lyonnais.

What you need to know:

It’s never easy delivering bad news, especially layoffs. Folks are bound to react. Here are three ideas that can help:

- Avoid catching them off-guard. Keeping people in the loop about their performance, and the company’s performance, is critical.
- Be sure they have a chance to react, and anticipate negative reactions.
- Be clear about your reasoning. You don’t want to let people wonder about your intentions and fill in the blanks with their own interpretations.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

No, the company lost when a court ruled the case could go to trial, which frequently results in a costly settlement.

The employee claimed she was summarily and unexpectedly dismissed while recovering from an injury she’d sustained on the job.

She said she would’ve healed in an acceptable amount of time, but that her employer failed to consider any accommodation.

The company argued that the employee never asked for an accommodation. It said the worker kept calling in absent and failed to communicate any clear intention to return to work, even on a light-duty schedule.

But the court came down sharply in the employee’s favor.

“Employers are required to engage in an interactive process with employees in order to identify and implement appropriate reasonable accommodations,” the court said.

In this case, that could mean the worker could “receive rides to and from work ... until she was released to drive,” or she could’ve transferred to a location closer to her home, the court said.

Employer’s responsibility

When it becomes clear that a qualified employee might benefit from an ADA accommodation, it’s the employer’s responsibility to bring up the idea and discuss implementing reasonable accommodations.

Case: Hazelett v. Wal-Mart Stores, Inc.

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