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February 15, 2021

OUR TOP STORY

Worker felt ostracized after filing harassment complaint

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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

Handling COVID issues at work

Firms bias settlement: \$1.6M

Engaging with remote workers

Boss's 'look' gets him in trouble

She felt she was being retaliated against: Key steps to take next

How can you make employees feel more accepted?

“Sharon, we looked into this pretty thoroughly. We talked to a lot of people,” Supervisor Daniel Hill said.

“And I thought you should know that pretty much everyone backed up your story,” he said.

Sharon, who worked only part time, had recently filed a sexual harassment complaint.

“I’m sorry this happened,” Daniel said to her. “We’re letting Curt go for his unacceptable conduct.”

A look of relief flooded Sharon’s face.

“Thank you,” she said.

“Now maybe we can all get back to doing our jobs.”

Nothing feels normal

After a few weeks passed, Daniel checked back in to see how things were.

“I have to tell you, nothing feels very normal around here anymore,” Sharon told him.

“Why’s that?” he asked.

“None of the men seem to be willing to work with me anymore,” she said.

“Are they refusing to cooperate or help

Please see Key steps ... on Page 2

Sharpen Your Judgment

He won’t sign disciplinary letter – now what?

“You want me to sign a letter admitting I screwed up?” asked Ron Newsome.

“Isn’t that kind of like signing my own death warrant?”

“Signing this letter won’t get you fired,” assured Supervisor Zeke Jones. “But not signing it will.”

“That shipping problem wasn’t all my fault,” Ron said. “Other people mess up more.”

“Don’t worry about other people,” Zeke said. “Just watch out for yourself.”

“I know the real story,” Ron said. “You think I’m old and you want to dump me – and my salary.”

“That’s why you keep giving me the dirtiest jobs around here.

“We treat everyone the same,” Zeke said. “It’s not like there’s younger guys lined up for your job.”

‘Get your coat’

“You say that, but it all comes down to the fact I make too much money, and my benefits cost a lot,” Ron said.

“Will you sign this?” Zeke asked impatiently.

“No,” said Ron.

“You might as well go get your coat,” Zeke said. “Not signing is the same as abandoning your job.”

“I have rights, you know,” Ron said. “You haven’t heard the last of this – I’ll sue the company!”

Was the firm able to get the case dismissed?

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.

Key steps ...

(continued from Page 1)

you?” Daniel asked.

“No, not openly,” she said. “But there is no camaraderie anymore, either,” she said.

“What are they saying to you?” Daniel pried.

Not as open

“They’re not saying anything,” Sharon explained.

“And that’s part of the problem.

“They haven’t criticized me or said anything. They just aren’t as open as they used to be.”

“I can’t actually tell people how to behave unless they are actually misbehaving,” Daniel explained.

“Maybe we should just give this a little more time to work itself out. You know?”

“Fair enough,” Sharon said.

More hours?

When Sharon saw Daniel a few weeks later, she stopped him in the hallway.

“You know, I would’ve helped out on that project everybody’s doing,” she said. “I told you before I need more hours.”

“Oh, I completely forgot that you’d asked for more hours,” Daniel said apologetically. “My bad! It really was just an oversight.”

“I’ll see what I can do.”
But time passed and Sharon never got offered any more hours.

Cutting back on payroll

“Is there any chance I’ll get to go full time soon?” Sharon asked Daniel one day.

“I’m sorry, but the company just keeps cutting back on the payroll budget,” Daniel said. “That’s why I haven’t been able to offer you any more hours.”

But Sharon wasn’t buying that it was all budget related.

“The budget clearly isn’t the problem,” she said, growing frustrated.

“You and everyone else are still holding a grudge against me for filing that sexual harassment complaint against Curt,” she said.

Sharon hired an attorney and sued her employer for retaliation.

The company said it was not able to offer the employee more hours due to budget constraints.

Decision: The firm won when a court dismissed the retaliation complaint.

The court said it found no evidence of any hostility toward the employee, who even acknowledged herself that no one had said a disparaging or harsh word to her.

The court said the tight budget was not a pretext for retaliation.

Case: Krueger v. St. Mary’s EMS, Inc.

What you need to know:

Retaliation occurs when an employer punishes an employee for engaging in legally protected activity. Two key steps to handling retaliation claims include:

- **Create a policy:** The policy should specify what retaliation is, state that retaliation won’t be tolerated and set forth a process for reporting and investigating complaints.
- **Keep Record:** Have a process in place that records and documents everything, from the initial complaint, through the investigation and all the way to the conclusion. It is imperative that you document the process for any future legal proceedings.

TEST YOUR KNOWLEDGE

Handling common COVID-19 situations at work

Along with turning the world on its head, the COVID-19 pandemic is forcing managers and employers to rethink and relearn how they do business.

Test your knowledge by responding *True* or *False* to the following real-life situations:

1. Before we let employees back on site, it’s perfectly legal to require proof they received a COVID-19 vaccination.
2. Our employees can choose to work remotely forever, so it’s a good management practice for us to adjust their salaries based on where they decide to live.
3. If you have an employee who unfortunately died from the pandemic, it’s probably a good idea to announce that to your staff and move on, rather than dwell on it too much in these times.

ANSWERS

1. *True.* With the exception of disabled employees or those with religious concerns, if a worker doesn’t receive a vaccine under these circumstances, you should determine whether this person is getting vaccinated poses a threat. If a direct threat exists, you can legally require this employee to stay home. *False.* The cost of labor, not the cost of living, should be the main driver of pay. You’re paying employees to do the job. And if talent is hard to come by, why risk upsetting an employee by lowering their salary?
2. *False.* It’s important to help people make sense of things. One big mistake employers make is minimizing the loss or trying to move away from the tragedy too soon. Employees could become more upset if they feel the company isn’t giving them the proper amount of time to process and grieve the loss.
3. *False.* It’s important to help

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.

Pet waste firm out \$40K for illegal pregnancy bias

What happened: A female pet waste tech at DoodyCalls, Rockville, MD, told a manager she had a pregnancy-related medical lifting restriction and needed a brief break after six hours of walking. The tech could have performed her duties by simply reducing the size and weight of each load, as she had done before the medical restriction. Instead of allowing the technician to do her job under the lifting restriction, the DoodyCalls manager fired her, telling her that he was concerned about the company's liability and that she could seek re-hire after her pregnancy.

Decision: Along with agreeing to pay the former employee \$40,000, DoodyCalls agreed to refrain from terminating employees based on their sex, pregnancy status, and/or disability in the future.

Cite: EEOC v. DoodyCalls.

Security firm agrees to \$1.6M bias settlement

What happened: A manager at MVM, Inc., an Ashburn, VA, security services firm, engaged in a pattern of discrimination against African employees by forcing them to work on their days off; subjecting them to heightened scrutiny, suspension, threats of termination and trumped-up charges of misconduct and poor performance; and firing them without cause.

During this period, about half of MVM's security employees were

African, and the EEOC said the manager complained there were too many and wanted to reduce their numbers.

Decision: Along with agreeing to pay \$1.6 million to the nine individuals who filed the lawsuit, MVM agreed to not engage in national origin discrimination in the future.

Cite: EEOC v. MVM, Inc.

Sex harassment suit cost firm \$175K to settle

What happened: The general manager of the Nature's Medicines facility in Ellicott City, MD, subjected patient service providers to a sexually hostile work environment. Patient service providers stock display cases, provide customer service, and ring up sales. The EEOC charged that the harassment included unwelcome touching, highly offensive sexual comments to and about staff and customers and showing an employee a nude picture on his phone, and that the harassment continued after employees complained.

Decision: Along with agreeing to pay \$175,000 to six individuals, Nature's Medicines agreed to provide training on federal anti-discrimination laws, with an emphasis on preventing sex-based harassment, and implement and disseminate an anti-discrimination policy. Nature's Medicines and Amma Investment Group must also report to the EEOC on how they handle any future complaints.

Cite: EEOC v. Maryland Health Management, LLC, d/b/a Nature's Medicines.

STOP, LOOK, LISTEN ...

Boosting engagement with your remote workforce

To engage employees in the past, we've had daily, weekly and monthly events.

On top of that, we held a huge annual retreat, much to everyone's delight.

Now, we don't even see each other at all.

Like many organizations, when the pandemic began, we moved to a remote work environment.

We quickly figured out how to get work done and keep operations running.

But we realized staffers were experiencing a loss of engagement and motivation.

We knew we had to make communication and interaction an even bigger priority while we were all dispersed.

3 unique efforts

In terms of boosting engagement, here's what we settled on that showed us the results we were looking for:

- We use daily group rendezvous on Slack to check status and discuss any concerns.
- We host weekly one-on-one video chats between employees and their direct supervisors to go over projects, check on resources, and just stay in the loop.
- We have a monthly all-hands video meeting. Leaders share current company performance metrics, department highlights and a "show and tell" on something unique we're working on.

Fortunately, these remote meetings haven't overwhelmed employees.

Instead, they've been the right mix of interaction to keep people engaged, informed and motivated, despite all the challenges of remote work and the pandemic in general.

This article was provided courtesy of Thibaud Clement, CEO, Loomly, Los Angeles.

SUPERVISORS SCENARIO

Can they take you to court because they don't like the look you gave them?

She says she's singled out for her religion – even though Supervisor never mentioned it

“What did you mean by that?” demanded Connie Bishop.

“By what?” asked Supervisor Martha Cox. “I didn’t say anything.”

“You didn’t have to,” Connie said.

“I told you I was converting to become a Jehovah’s Witness.

“When I said it, you made a face and your jaw dropped as if I told you I had leprosy and was still contagious.”

“All I did was ask you to explain why you missed another deadline,” Martha said. “I didn’t ask about your religion.”

“I wanted to talk about your problems on the job. It has nothing to do with being a Jehovah’s Witness,” Martha said.

“I created an improvement plan for you that targets two weak spots,” Martha said.

“One, getting along with people: I’m still hearing too many complaints about how you treat co-workers.

“Two: “You’re coming late every other day. This has to stop.

“To help, I’ve listed goals, like returning phone calls the same day, keeping files up

to date and following directions.”

Connie read the list.

“This is all just the same old nit-picking,” Connie said. “I’ll sign it, if it means you’ll stop harassing me.”

Was it her work – or her faith?

Two weeks later, Martha went through Connie’s files in preparation for an audit.

“If the auditors see this mess, they could shut us down!” Martha told Connie. “We can’t tolerate this carelessness. You’re fired.”

“This isn’t about my work – you’re supposed to be helping me improve,” Connie said. “It’s really my religion!”

Connie sued for bias, saying she was fired for being a Jehovah’s Witness.

Decision: The company won when the court dismissed the employee’s complaint. She admitted to shortcomings, but had no proof – beyond her own perceptions – she’d been the victim of religious bias.

Case: Shabazz v. Safe Horizons.

What you need to know:

As a supervisor, you’re always on stage, with employees watching all you do – and often trying to read something more into every word and action.

Remember:

- The simplest mannerisms – when you choose to laugh, when you grimace, or faces you make – will be interpreted differently by each employee.
- Even if you haven’t said anything on the topic, your silence can speak volumes – especially to employees who take it upon themselves to fill in the blanks.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

No, the company lost when a judge declined to dismiss the age discrimination claim and ruled that the case could go forward to trial.

The court said the employee presented a plausible claim that the decision to fire him was based on his age.

The company argued the worker technically never suffered an adverse employment action because he left voluntarily. And with no adverse action, there could be no bias.

In the employer’s view, not signing the letter was the same as voluntarily abandoning the job.

But the court found that logic pretty weak.

Because the firm and the worker actively disagreed about the content and nature of the

letter, the employee couldn’t agree to anything when he didn’t sign it.

Painted into a corner

This case is a clear example of why managers and supervisors should take caution when creating ultimatum-style situations that essentially paint an employee into a corner.

Here, the employee never really was in the position to make a decision, so he couldn’t have done anything “voluntarily.”

Hence, if you resort to these types of tactics, remember it may turn out you’ve painted your own self into a corner, as well.

Case: Apau v. Printpack, Inc.

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