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March 1, 2021

OUR TOP STORY

Employee with disability fired for screaming at co-workers: Is that legal?

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Pregnancy claim settled for \$39K

Tough questions bosses don't ask

Her harassment claim puts boss to the test

Worker blames outbursts on his disability: Boss's tough call

Drawing the line on ADA accommodations

Sandy was going over some budget figures in her office when an employee popped in and said, "You better get out here before this gets out of hand."

She vaulted out of her chair and hustled down the hall, following the employee in the direction of a shouting voice.

She thought, "Oh, no, that sounds like Bill – again."

Sure enough, she came upon Bill shouting and cursing at a co-worker.

"Bill," she said firmly, "I want you in my office right now."

He turned to her and said, "But I ..."

"Right now, Bill," she repeated.

After the two of them made it back to her office and were seated, she began: "OK, what's it all about this time? Why are you having another blowup?"

Just one question

He gestured back down the hall as he spoke: "Mike was supposed to help me today with my project, and all of a sudden he tells me he's too busy."

"I'm going to ask you just one question for now," she said. "Did you at any time

*Please see **Outbursts ...** on Page 2*

Sharpen Your Judgment

Race and gender claims land boss in hot water

HR manager Lynn Rondo felt a headache coming on as she studied the restructuring plan.

"Hi, Lynn," Company Attorney Eric Bressler said. "Am I interrupting?"

"Not at all," Lynn said, looking away from her computer screen. "I need a break from thinking about this reorganization."

Eric grimaced.

"Sorry, but that's what I needed to talk to you about," he said.

"Leslie Claremont is suing us. She says we stuck her with a bad new assignment because of her race and gender."

Lynn sighed. "She can't be serious. Yes, we gave her a reassignment, but it was because of the

restructuring. Everyone got shuffled around," Lynn said. "Besides, her main duties were pretty much the same. So was her pay."

Worst reassignment ever

"I'm with you on this," Eric agreed. "But Leslie is insisting she got the worst reassignment of anyone. It wouldn't be too hard for her to blame it on her race and gender in a courtroom."

"I'm confident we can fight this one," Lynn said. "This reassignment wasn't discriminatory."

When Leslie sued, claiming she experienced adverse employment actions due to her race and gender discrimination, 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.

Outbursts ...

(continued from Page 1)

threaten Mike, or say anything that sounded like a threat?”

“I don’t know for sure,” he answered. “You know how it is with my condition – I say stuff and don’t even know what I’m saying.”

“Here’s what I know,” she replied. “You suffer from anxiety and depression, and you’re getting treatment. But more than once, you’ve made threats of violence against employees here.”

“I know,” he nodded. “It’s all part of the illness. And my doctor says I’m not a real threat.”

“I get it, and I sympathize,” she said. “Still, I can’t let you go on threatening people here. So let me look into this further, and we’ll talk again.”

Witnesses say

Sandy met with Bill again a few days later and handed him some documents as she spoke: “These are statements from two employees who witnessed the argument with Mike.

“Independently, both employees say you started it and that you threatened to ‘kill’ Mike.”

Bill scanned the statements and said nothing.

Sandy continued: “As a result, I’m going to have to let you go for repeated offenses and ignoring

warnings about threats.”

“What?” he said. “But I have a documented disability that affects my behavior, and you know it. You can’t just fire me for that.”

“I don’t have any choice, Bill,” she said. “People here are afraid to work with you.”

The lawsuit

Bill left quietly but later went to a lawyer who filed a lawsuit against the company for violation of the Americans with Disabilities Act.

The suit charged that while Bill was receiving treatment for a disorder, the company had to accommodate his outbursts. Plus, a doctor noted that he wasn’t a real threat to harm anyone.

The company’s counter was that the outbursts and threats were harmful to business and couldn’t be tolerated.

Decision: The company won.

A judge noted the ADA mandates that employees who

suffer from a disability – emotional or otherwise – must be able to handle the duties of the job. Here, the “duties” entailed working with others without making threats of violence against them.

Key: The supervisor gave the employee chances to change his behavior, warned the employee of the consequences and related the firing to business reasons.

Case: *Mayo v. PCC Structural, Inc.*

What you need to know:

ADA rules for dealing with employees who suffer with emotional disorders are much the same as those for dealing with an employee who suffers from a physical disorder. You must:

- Make any reasonable accommodations that allow employees to perform their essential functions
- Refrain from asking employees about the specifics of their conditions – though you may ask if or how the condition affects the ability to perform essential functions, and
- Avoid including the disability in the decision-making process for granting promotions or other benefits.

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 good will, 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 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.

Firm settles pregnancy bias claim for \$39K

What happened: Regency Park Assisted Living & Memorial Care, an assisted living facility in Eustis, FL, offered a woman a position as a caregiver. While she was in the process of filling out paperwork, the woman mentioned that she was pregnant.

Shortly after, Regency Park rescinded the offer and informed her that it decided to go with someone else for the caregiver position.

Decision: Along with agreeing to pay the woman \$39,000 to settle the claim, Regency Park agreed to adopt and distribute an updated policy against pregnancy discrimination, conduct training on pregnancy discrimination, provide semi-annual reports to the EEOC, and post a notice.

Cite: EEOC v. Excel Hospitality Group LLC.

Sex harassment claim costs firm \$80,000

What happened: Moore & Morford, Inc., a steel-fabrication company in South Greensburg, PA, subjected a female welder to a hostile work environment because of her sex. The EEOC charged that male employees repeatedly called the female welder various offensive, sex-based epithets, told her that “women don’t belong on the floor,” and manipulated steel beams and equipment to threaten her safety. When she reported the harassment, her foreman grabbed her by the shirt collar, denied her tools and equipment,

and ordered her to clean feces in the women’s bathroom.

Decision: Along with agreeing to pay the woman \$80,000, Moore & Morford must report to the EEOC on its employment of women and on any future complaints and investigations of sex discrimination, sexual harassment or retaliation.

Cite: EEOC v. Moore & Morford.

Public library hit with gender pay violations

What happened: Baltimore City and its Enoch Pratt Free Library rehired a male in June 2015 as a Librarian Supervisor at a salary which was thousands more than that paid to the five females who held that position even though the male had fewer years of service and experience.

Decision: After a five-day “virtual” trial, a judge for the U.S. District Court in Maryland rejected the Library’s argument that the male and female Librarian Supervisors did not perform the same work.

The court further rejected the Library’s argument that the salary disparity was based on a reason unrelated to sex, finding that the Library had failed to produce any evidence to explain the male’s higher salary.

The court also found that Enoch Pratt Free Library failed to show that the pay disparity was in good faith and that managers had reasonable grounds to believe that they were not violating the law.

Cite: EEOC v. Enoch Pratt Free Library/City of Baltimore.

STOP, LOOK, LISTEN ...

3 good, tough questions most managers don’t ask

If you are like most frontline managers, you have tough questions you’re not ready to ask.

‘Why should I praise people for just doing their jobs?’

To some, this question sounds insensitive. But to frontline managers who always did their job without expecting balloons and banners, it’s real and simple. And the answer is simple:

Two words: positive reinforcement. What gets rewarded gets repeated. If you want them to keep doing their job let them know that their work is appreciated.

‘We pay well. Shouldn’t the money be enough motivation?’

In a word, no. Some employees may get enough out of the paycheck. Others don’t. And it’s leaders’ jobs to motivate as necessary.

Frontline managers want to check in with employees to find out if their motivation is cash, recognition, challenging work, growth opportunities, job security, etc. Then they can meet with HR leaders to create a plan that works for each employee.

‘How can I possibly praise them without sounding phony?’

Frontline managers who don’t fully understand why they need to praise people for hitting expectations might sound insincere.

But they won’t if the praise is:

Specific: Skip “Good job” and say exactly what happened and why it’s important. Example: “Thanks for jumping in to help with that order. The extra effort for the team will help us reach the monthly goal even sooner.”

Timely: Praise immediately.

Sincere: If you get the first two right, you’ll be sincere.

Courtesy: **Liz Uram**, trainer, speaker and author of four books, including *Communicate Like a Boss: Every Day Leadership Skills That Produce Real Results*.

SUPERVISORS SCENARIO

She didn't want to share all the details about being sexually harassed: Did she have to?

Handling complaints when employees aren't as forthcoming as you'd like

“This is just way too embarrassing to give you all the details right now,” Gwen told Tom Coleman, her supervisor. “But I need to know,” Tom said.

“Haven't I told you enough for you to have a clear picture?” Gwen said. “Curt has been sexually harassing me for some time now.

“I want you to put a stop to it!”

“If you told me more it would help me figure out exactly how serious this is,” Tom said. “What did Curt do?”

“His jokes, his comments, he's always too touchy-feely,” Gwen said. “I told you I don't want to get into all of the details.

“I've asked him to stop and he hasn't,” she added. “I consider his behavior to be sexual harassment.”

“If I knew what exactly to put down on paper, you could sign a formal complaint,” Tom encouraged.

“I don't want to sign any kind of formal complaint,” Gwen said.

“Just get him to stop!”

“I have to be honest with you, I'm a bit

uncertain about all this,” Tom said. “This doesn't sound like Curt. And you've only brought this up after I reprimanded you for poor performance.”

Suspicious timing?

When the firm failed to move quickly enough on her complaint, Gwen sued her employer for sexual harassment, and also for allowing a hostile work environment to persist.

The company said Gwen failed to file an official complaint detailing her allegation, and was suspicious about the timing, given her recently document performance problems.

Decision: The firm lost when a jury awarded the employee \$180,000.

After an expensive trial, the jury said the employee had presented more than enough information for her employer to investigate.

Key: A good investigation is legally required when a complaint is made.

Case: Hanley v. Doctor's Hospital of Shreveport, LA.

What you need to know:

When it comes to complaints about sexual harassment, you owe it to your employees to take the complaint seriously and investigate thoroughly.

It pays to:

- Create a supportive environment where individuals feel safe to report harassing behavior
- Use well-trained, objective, and neutral investigators, and
- Always communicate the determination of the investigation, and any sanctions imposed, to the appropriate people.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes. The company won when a court dismissed the case. Leslie's attorney argued she was saddled with an unappealing job assignment – an adverse employment action – in the restructuring due to her race and gender.

However, the court disagreed. It said Leslie's job reassignment was due to the company restructuring, and it found nothing discriminatory about it.

The court went on to say that no adverse employment action actually occurred. Leslie's core job duties remained mostly the same, and her pay wasn't affected at all.

“An adverse employment action is a discriminatory act that affects the terms, conditions or benefits of the plaintiff's

employment,” the court said. And that wasn't the case here.

What's an adverse action?

This case demonstrates that reassignments aren't automatically considered an adverse employment action.

To establish an adverse action, the employee must show the job change affected them negatively, like a significant change in duties and scheduling, or a pay cut.

In this instance, the employee failed to establish there was anything negative or adverse about her reassignment.

Case: Passwaters v. Wicomico County

EDITOR: RICH HENSON

ASST. EDITOR: RACHEL MUCHA

MANAGING EDITOR:
TOM D'AGOSTINO

PRODUCTION EDITOR:
P.J. FRONZEO

EDITORIAL DIRECTOR:
CURT BROWN

Subscriptions: 800-220-5000

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