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INSIDE

Workplace investigations

Holiday Inn sued for pregnancy bias

Supporting your female employees

Supervisor hit with ADA violation

They're comparing paychecks – and that puts boss on the spot

Pay equity? Job titles were the same, pay wasn't

Alicia was beaming when she heard the news from Sam.

"You're going to be one of my assistants, and you'll get a little bump in pay," he explained. "You've earned it."

"Thanks, Sam," she smiled. "I don't mean to be too greedy about this, but exactly how much is a 'little bump'?"

"No problem," he laughed. "I'm as interested in money as the next person. Here's the figure."

He slid a sheet of paper toward her. She read the figures on it and frowned.

"You're not happy?" he asked.

"Don't think I don't appreciate the raise or your confidence in me," she said. "But last year, when you put Hank in an assistant job, he was gushing about how big a raise he was getting. This amount doesn't seem like anything to get too excited about."

'I don't do that'

Sam pondered the comment for a moment and then replied: "Well, first of all, I'm not going to get into how big a raise Hank got. You know I don't do that.

"Second, it's true that I made Hank an

Please see Paychecks... on Page 2

Sharpen Your Judgment

Boss's promotion choice challenged in court

"We need to discuss how you went about deciding who got the promotion in your group and why JoAnn didn't get it," HR manager Al Vargas said to Rick Monty.

"Sure," Rick agreed. "I felt that JoAnn had some problems interacting with people, and that position requires a lot of contact with others."

"And is it true you got feedback about JoAnn from others in your group, including Sam and Cindy?" Al asked.

"I did ask them what they thought about JoAnn," Rick said. "But my personal experience with her is what I really based my decision on."

Al nodded and said, "Let me explain the problem. First, you gave the promotion to someone a lot younger than JoAnn, who's 63. Second, she

says the two people you consulted made openly hostile comments to her about her age – like calling her 'mummy' and 'dinosaur.' You knew about that?"

"Yes, but that was during an argument," Rick explained. "Things got heated, and people said some things they shouldn't have. That's all. Besides, I'm the one who made the choice, and I've never said or done anything to show bias."

Proof of bias

Al responded: "I understand. Still, JoAnn says consulting them and hiring a younger person proves you're biased."

When JoAnn sued for age discrimination, the company said she'd been passed over because of poor qualifications, not because of her age. Did the company 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.

Paychecks ...

(continued from Page 1)

assistant, sort of like I did with you, but there ...”

Alicia interrupted: “What do you mean, ‘sort of?’”

“That’s what I was getting to,” he said. “Sure, I gave both jobs the same title, but Hank’s job is a lot more complicated and has more responsibility. For one thing, he’s running the computer end of our operation, and that’s huge.”

“Are there parts of the job I’m doing that Hank isn’t doing?” she asked.

“Oh, yeah,” he said. “That’s one of the reasons I have two assistants – to split up some of the duties.”

“This seems a little odd to me,” she observed.

“What’s odd about splitting duties?” he said. “That seems pretty normal to me.”

Separate, not equal

“You say Hank deserves more money because he’s doing stuff I’m not doing,” she said. “But what about the stuff I’m doing that he’s not? What about that?”

“Maybe I wasn’t clear on this,” Sam answered.

“Yes, you’re each doing separate duties, but that doesn’t mean they’re equal. Hank is responsible

for some crucial parts of the operation – parts that we may someday get you involved in, but right now I’m giving you what I think you can handle.”

“Because I’m a woman and Hank’s a man, right?” she said with some sarcasm. “He can handle more than I can, and gets more money for it.”

Sex discrimination?

Sam tried to stay calm as he spoke: “Look, I explained the differences and why they exist.

“It has nothing to do with who’s a man and who’s a woman.”

But Alicia disagreed, to the point that she filed a lawsuit against the company for sex discrimination. She argued she was getting less money and less opportunity than a man in the same position.

The company’s counter was that the positions were the same in name only – that they each comprised

different duties, and that one was at a higher level than the other.

Decision: The company won. A judge ruled that having the same or similar titles for a job doesn’t always mean the jobs are the same or deserve the same pay.

Key: The supervisor provided a reasonable explanation for why the jobs were different – and proving that gender wasn’t a factor.

Case: *Howard v. Lear Corp.*

What you need to know:

Job descriptions matter – in the workplace and in the courts.

When working with HR or your manager to put descriptions together, consider that:

- Each duty listed actually is a component of the job, and not just “filler”; if it’s listed, a court will assume it’s a real task.
- The differences in jobs that receive different compensation are clearly listed and detailed so that there’s no guesswork involved in understanding the differences.
- Your employees need to understand the duties and the level of skills and abilities required to perform the duties.

TEST YOUR KNOWLEDGE

Workplace investigations: Keys to staying impartial

Employee complaints about mistreatment, bias and the like often fall into the he-said/she-said category, where it’s up to the supervisor to assess who’s telling the truth.

Test your knowledge of how best to do that by responding *True* or *False* to the following:

1. If an employee is going to give you an account of an incident, it’s best that you listen to the account in a face-to-face meeting to, among other things, pick up on body language and nuances.
2. When taking a spoken statement, make note of your questions while the person is talking, and save the questions for the end, rather than asking them during the statement.
3. When asked to retell a story, a liar will often add details and a truthful person will recite the same details as in the first statement.

ANSWERS

1. *False.* While most of us want to believe we’re skilled interrogators who, as in detective movies, can pick up on expressions and body language, in fact the opposite is more common.
2. *True.* In a face-to-face, the idea is to let the person keep talking, and possibly make contradictory statements. If the person stops talking, you then can ask a question or say, “What happened next?”
3. *False.* Studies show that a liar will recite details a second time, without added information. Truthful people who are asked for a second telling often remember details they didn’t mention the first time.

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.

Holiday Inn sued for firing pregnant employee

What happened: Awon Phie LLC, doing business as the Holiday Inn Express & Suites in Corpus Christi, TX, violated federal law when it fired a temporary employee placed by a staffing company because she was pregnant, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a recent lawsuit.

The lawsuit alleges the company's operations manager told an employee that she noticed her stomach, referring to her being pregnant. The company's operations manager told the employee she was a "liability" because of her pregnancy and fired her, stating that she could not allow a pregnant woman to work for the employer, the EEOC charged.

Decision: The case is pending. The EEOC is seeking back pay and compensatory and punitive damages for the employee.

Cite: EEOC v. Awon Phie LLC d/b/a Holiday Inn Express & Suites.

Home health provider out \$160K for disability bias

What happened: An employee of Gentiva Health Services, doing business as Kindred at Home, Atlanta, asked to telecommute for three weeks as an accommodation for her serious foot disability and in accordance with her doctor's recommendation to stay off her feet.

Kindred originally allowed her to telework for a week but

then reversed its decision and unilaterally placed her on unpaid leave without benefits for four months, despite the fact she could perform the essential functions of her job.

Decision: Along with paying \$160,000, Kindred agreed to regular reporting, monitoring, annual training, distribution of ADA policies, and notice posting.

Cite: EEOC v. Gentiva Health.

Security firm settles 'ethnic hairstyle' lawsuit

What happened: Official Security, a Las Vegas-based security company, has settled a federal charge of race discrimination filed by the U.S. Equal Employment Opportunity Commission.

The EEOC alleged that Official Security violated federal law when it failed to allow a Black applicant to apply for a vacant position due to her ethnic hairstyle.

Decision: Along with making an unspecified monetary donation to the community, Official Security agreed to begin in-house bias training with a specific emphasis on race discrimination and unfair hiring practices for all its employees; revise and disseminate its officer grooming and uniform standards policy; create and disseminate a religious and medical accommodation policy to all employees and update its website, employee handbook and memo to potential applicants. The EEOC will monitor compliance with the agreement.

Cite: EEOC v. Official Security.

STOP, LOOK, LISTEN ...

Offering female workers tools needed to succeed

Between service job layoffs and the absence of many child care options, about two million women have been driven out of the workforce to stay home with the kids, according to the Bureau of Labor Statistics.

Employment experts say this mass exodus will hold dire consequences for women's long-term career prospects and hurt the long-fought battle for equal pay.

Diversity is key

Studies have consistently shown that a diverse workforce is incredibly beneficial, with positives ranging from higher efficiency to better problem solving and financial performance.

Not only that, but it's a risky legal move to do nothing about this issue.

If your company is seen as male-dominated, it can lead to gender discrimination claims – and the last thing you want to do is discourage female candidates from applying for or accepting a job.

It's crucial for employers to act now and think of tangible ways they can begin to address this issue before it's too late.

Here are four best practices to ensure your company is supporting women and offering them the tools they need to succeed right now, courtesy of the employment law attorneys of the firm Epstein Becker Green:

- Evaluate output only
- Conduct exit interviews
- Consider a virus leave policy
- Focus on fixing the system

It's important that the responsibility isn't placed on women to figure out how to help themselves. The system is what's broken – not the way women are handling this.

Instead of spending valuable time training employees on time management, form practices designed to support them in what they need. Women want to be able to balance home and work duties – and it's up to you to help them.

SUPERVISORS SCENARIO

Was she terminated for falsifying her employment application or was it bias?

Supervisor finds himself up against the Americans with Disabilities Act

“Wait, you’re letting me go?” Betsy Blake said, surprised.

“It’s not going to be possible for you to keep working here,” said Supervisor Chuck Glover.

“I’m sorry,” he added.

“I see,” Betsy said, slumping back in her chair. “Is this because you found out I’m being treated for Hepatitis C?”

“No, it’s not because of your treatment,” Chuck said carefully.

“We’re letting you go because you misrepresented your medical condition on your employment application.

“Look right here,” he said, handing her the form. “You checked ‘no.’ Correct?”

Betsy read the question: “Please indicate if you are under a doctor’s care or taking regular medications now.”

“It’s not like I can’t work,” Betsy said. “Yes my doctor keeps tabs on me, but it’s not like I can’t work.

“Besides, I’ve been working here for a few months now and I’m doing pretty well, or so you’ve told me.

“So does it really matter what I put on some silly form?” she asked.

“Yes” Chuck said, before showing Betsy to the door.

EEOC gets involved

Betsy complained to the EEOC, which later sued the firm on her behalf.

The EEOC claimed the supervisor had stated during the investigation that if “Betsy were still working here and our clients knew about her condition, we’d have a mass exodus of clients.”

The EEOC maintained that statement revealed the supervisor regarded Betsy as disabled, and that was the reason for firing her.

Decision: The firm lost and had to pay over \$20,000 to the employee. The court said the supervisor’s comment showed he believed the employee was significantly restricted in her ability to perform her job. Firing her for lying on her application was just a pretext, the court said.

Case: EEOC v. Heartway Corp.

What you need to know:

You need to find out as much as you can about people during the hiring process. But always be careful.

There are many restrictions on what you can and can’t do. For example:

- You can ask about someone’s ability to perform specific job functions, **but you cannot** ask about the existence, nature or severity of a disability.
- After you’ve offered someone a job, **you can** require they take a medical exam, **but you cannot** single anyone out in that process.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

No, the company lost.

The judge said a combination of factors affected the decision.

First, there was the awarding of the promotion to a younger person. That, in itself, wouldn’t have been enough to sway the case in the employee’s favor, but of course there was more.

Soliciting input from two people who had made openly derogatory remarks about the employee’s age raised enough of a question about the fairness of the selection process to lead a reasonable person to conclude that age bias was a factor.

True, the supervisor had sole responsibility for the decision, but – by consulting the others – he raised questions about his ability to be fair.

All that, in total, added up to a case of age discrimination.

One tipping point

As illustrated, often a number of factors come together to undermine a supervisor’s claim of fairness.

Still, there’s just as often a key factor, maybe a lapse in judgment, that tips the judge’s decision in favor of the employee. In this instance, it was at least the appearance that the supervisor had delegated his responsibility to people who’d shown themselves to be biased. It’s the supervisor’s responsibility to ensure fairness.

Case: Beecham v. Wyndham Vacation Resorts Inc.

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