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October 15, 2021

OUR TOP STORY

Firing decision seemed solid until worker hired an attorney

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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

Brainstorming: Get better results

Dell out \$75K in equal pay lawsuit

Communicating post-COVID

One fired, one not: Racial bias?

One ugly remark by supervisor gave employee ammo to sue

Supervisor did her homework documenting worker's performance

Sandy got right to the point as soon as Alex sat down: "I have some bad news. We've decided to let you go."

"What about my performance improvement plan?" he protested. "I thought I was getting a chance to improve my numbers."

"That's about run its course," she explained. "Your performance really hasn't improved at all, and I think it's time for everyone to move on. HR will explain your benefits and ..."

"I guess you finally figured out a way to get rid of me," he interrupted.

Sandy blinked and said, "I'm not following you."

'That should tell you something'

He responded: "Well, OK, when your supervisor makes cracks about your heritage, and you complain about it and then get fired, that should tell you something, don't you think?"

Sandy sighed before replying: "Alex, we've been through this, and I thought we'd worked it out. I was angry and said something I shouldn't have said, and at

Please see Ugly remark ... on Page 2

Sharpen Your Judgment

Boss on the hot seat for not firing girlfriend

HR manager Lynn Rondo sat at her desk, already dreading her next meeting with an employee who had just been let go.

"Hi, James," Lynn said when he appeared in her office. "I'm sorry things didn't work out for you. I want to go over a pretty generous severance package we put together for you."

"This is ridiculous," James said. "We both know I'm only losing my job because I'm not sleeping with the boss."

Lack of funding

Lynn blinked, shocked. "Excuse me?"

"The layoff was between me and Melanie, right?" James asked.

"Of course I got the ax," he said, "because Melanie is in a relationship with her manager. That's what saved her."

"James, I wasn't aware of anything going on between Melanie and her manager. But that had nothing to do with this decision," Lynn said.

"We simply don't have the money to keep you both. And actually, Melanie has consistently had better performance reviews than you."

"We both know why she had better reviews," James said, getting up. "This is discrimination. I'll see you in court."

When James sued for gender bias, the company fought to get the case dismissed.

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.

Ugly remark ...

(continued from Page 1)

the time I didn't even know you have Mexican heritage until you complained about my comment."

"You bet I complained," he shot back. "You told someone here the people in the warehouse were a 'typical bunch of lazy Mexicans.' Remember that?"

"I do," she admitted. "They failed to get that important order out on time, and I was under a lot of pressure over it. You knew that."

He came back at her quickly: "And that's your big excuse?"

She sensed the conversation was going downhill, and changed course: "I've explained I said something out of line. I apologized to you for it. We have to end this and move on."

"Just move on, huh?" he said through a tight grin. "You insult my heritage and then fire me, and I'm supposed to just move on."

'See the problems for yourself'

She responded by pulling out a stack of papers and saying, "These are copies of the records of your output and productivity during the time we implemented the improvement plan."

She concluded, "You can see the problems for yourself – I have nothing to hide."

He snatched the paperwork but barely looked at it.

Then he said, "You haven't heard the last of this. You insulted me, and I have witnesses to what you said. Let's see what my lawyer has to say about it."

He sues

Alex left without incident, but later sued the company for national-origin discrimination. He said his supervisor's unguarded comment proved she was biased against Hispanics, and that she fired him partly because he was Hispanic.

The company fought the suit by arguing that one wayward comment didn't prove bias.

Plus the supervisor had ample documentation to support the action.

Decision: The company won. A judge said one comment, made under pressure and without any other related offenses or actions, didn't support the bias charge. Plus, the supervisor had done her homework on documenting the employee's substandard performance.

Key: The supervisor in this case got "bailed out" by good documentation. Without it, her case would have been weak at best.

Of course, the lesson is to refrain from comments that could be interpreted as discriminatory.

Case: Trujillo v. Henniges Automotive Sealing Systems NA Inc.

What you need to know:

Under pressure and in the heat of the moment, people sometimes are tempted to say things they don't mean. Don't do it. Such comments can be deadly when an employee uses them as a basis for a discrimination complaint. To prevent that from happening:

- Avoid references to race, gender, heritage, etc., even lighthearted ones
- Let HR know if someone has accused you of making such a comment, and
- Keep good documentation on employee performance and behavior so that any action you take against an offended employee isn't seen as part of a pattern of bias.

TEST YOUR KNOWLEDGE

Brainstorming for results

You need fresh ideas for solving a problem, so you pull a bunch of people together in a room for what's known as a brainstorming session.

What happens then? That depends on how you conduct the session.

To get an idea of the best methods for ending up with great results, answer *True or False* to the following:

1. In any type of brainstorming, the supervisor should kick things off by giving his or her ideas first. That encourages everyone else to jump in and be heard.
2. To make sure everyone gets heard, use the "let's go around the table" method – giving each participant a turn to speak.
3. The group should consist only of people who are experts in the topic being discussed. Outsiders will just dream up impractical ideas and waste everyone's time.

ANSWERS

1. *False.* When the boss speaks first, "me, too" ideas that fall in line with the boss's thinking. As a supervisor, speak as little as possible, maybe just by asking questions in the beginning. And let someone else run the session.
2. *False.* That's a leftover from the grade-school days when we were taught to play fair and give everyone a chance. Brainstorming works best when the ideas leap out. The around-the-room approach is a sure killer of spontaneous ideas.
3. *False.* It's OK to include experts on the topic, but usually a diverse group works best. You want fresh ideas and a new way of looking at things. Remember, the airplane was invented by brothers who ran a bicycle-repair shop, and the printing press was developed by a winemaker.

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.

Dell pays \$75K to settle equal pay/bias lawsuit

What happened: Kea Golden worked as an information technology (IT) analyst for Dell, Inc. beginning in September 2017. At the time of hire by Dell, Golden had 24 years of IT experience.

Dell also hired three male IT co-workers along with Golden to work the same department. During her employment with Dell, Golden performed the same tasks, assignments and work as one of her male co-workers, all of whom she had worked with at a prior employer.

However, Dell paid Golden \$17,510 less annually less than the male co-worker.

Decision: In addition to paying \$75,000 in monetary relief to Golden, Dell has agreed to provide specialized training on the Equal Pay Act and Title VII, and to post a notice of employee rights under both laws.

Cite: EEOC v. Dell, Inc.

Special events firm pays \$20K for sex harassment

What happened: The owner of Great Rentals and Events, LLC, San Antonio, TX, repeatedly subjected a female employee to comments that were demeaning to women, including sexual comments and other remarks that expressed hostility toward women in the workplace.

After the employee sought the help of human resources, the owner fired her in retaliation for her complaints, the EEOC charged.

Decision: The consent decree resolving the case provides the former employee with back pay and compensatory damages of \$20,000. The decree also includes a requirement the firm provide anti-discrimination training and posting of notices in the workplace.

Cite: EEOC v. Great Rentals and Events, LLC.

Manufacturer pays \$27K in disability bias case

What happened: Zero Manufacturing, a North Salt Lake, UT, aluminum fabricator, denied a qualified individual with a disability a reasonable accommodation to perform her job.

According to the EEOC, the reasonable accommodation was in the form of leave. Although the company was aware of the employee's need for leave as an accommodation, the company issued attendance points to the employee for time away from work due to her disability, and subsequently fired her based on the company's attendance policy.

The EEOC said the company had implemented a no-fault attendance and leave policy and/or practice that subjected qualified individuals with disabilities to attendance points for missing time from work for disability-related reasons.

Decision: The firm agreed to pay \$27,500 to settle the disability claim against it.

Cite: EEOC v. Zero Manufacturing/Star Cases.

STOP, LOOK, LISTEN ...

Communication challenges

How we interact with employees, bosses and co-workers has changed.

"None of us today needs a linguistics degree to know that the ways we communicate meaning today are far more confusing than ever," says Erica Dhawan, in her book, *Digital Body Language: How to Build Trust and Connection, No Matter the Distance*.

Make reading a priority

"Reading carefully is the new listening," Dhawan says. Most communication is through email and messaging apps, but people tend to skim when reading on screens.

Conscientious reading needs to be a new priority. Be sure to soak in all the relevant points and questions.

Written words count

Since more messages are relayed via the written word, make yours count. A dropped word or forgotten punctuation can doom a message.

That's why it's critical to proofread – or use grammar and proofreading programs – before you send.

Dial for effectiveness

An effective phone call can prevent confusion, miscommunication and time-sucking email exchanges.

Instead of asking one tiny question after another in writing, you can formulate the right questions and answers in a phone call.

Call when absolute clear communication is essential.

Set a schedule

It's tempting to respond immediately to written communications. But that's not effective.

Most messages don't need immediate responses. You'll likely give more thorough responses if you take time to let information or questions set in.

Then you can formulate the right answer.

SUPERVISORS SCENARIO

One employee gets fired for theft, while the other gets a pass: Was it racial discrimination?

Boss on the hook after making a tough workplace call

“And because this is your third warning about taking home company supplies, I’m going to have to let you go,” Dale explained to Robert.

“I never took anything,” Robert fumed.

Dale shook his head as he spoke: “I saw you put the stuff in your car, and it’s even on the security cameras.”

“OK, so when are you going to fire Jill?” Robert responded.

“Why would I fire Jill?” Dale asked.

Everyone knows it

“Everyone here knows she’s taking copy paper for her little at-home business,” Robert charged. “But I get it. She’s a white woman, you’re white, and I’m Black. That means she gets a pass while I get fired.”

“I heard the rumors about Jill, and I questioned her,” Dale said. “She said she bought the paper on her lunch hour and brought it back to her desk. It was actually her own paper that people saw her leaving with. She even produced a receipt when I asked her about it.”

“But you don’t believe me,” Robert noted. “Tell me that’s not discrimination.”

“Think what you like,” Dale answered. “We have proof that you stole, and Jill provided evidence that she’s innocent. End of story.”

But it wasn’t the end of the story. Robert sued for race bias, saying he’d been terminated for suspicion of theft while a white employee who was under suspicion for the same offense got to keep her job.

The company argued the circumstances were totally different in the two cases and that race had nothing to do with the differences in treatment.

Decision: The company won. A judge ruled the firing of one employee and the retention of the other were justified.

Keys: The supervisor showed diligence in investigating both cases and using the evidence at hand to make his decisions. He didn’t rely on rumors or assumptions about either employee.

Case: Austin v. Compass Group.

What you need to know:

Equal offenses usually call for equal penalties. To ensure you follow that rule:

- Check with HR and other managers to see how similar offenses have been handled by your organization in the past; consistency across department lines is important
- Double-check to make certain the offenses really are similar and warrant the same discipline, and
- Make the punishment fit; you don’t want to set a precedent of harsh consequences for minor offenses.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes, the company won when a court tossed out the lawsuit.

The employee’s attorney argued the layoff was due to gender discrimination because the manager had a clear bias toward a female employee he was in a romantic relationship with.

Since they were admittedly involved in a romantic relationship, the attorney argued, it was a form of gender bias, and therefore a violation of the Civil Rights Act.

But the court didn’t see it that way.

First, it said that Melanie’s performance was better, so there was a nondiscriminatory reason for keeping her instead of James.

The court went on to say that even if the

manager did show preference to Melanie because of their relationship, that still wouldn’t constitute sex bias. Melanie’s gender wasn’t the reason she was kept on – it was because of her personal relationship with the manager.

An important distinction

This case made an important distinction that just because an employee is given preferential treatment over another employee of the opposite gender, it doesn’t automatically constitute sex bias. To prove gender bias, an employee must show their gender is the reason they are being treated differently – and not just their personal relationship with the manager.

Case: Maner v. Dignity Health.

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