

# Supervisors

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December 1, 2021

### OUR TOP STORY

**Why ADA rules are similar for emotional and physical ailments**

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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

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**Farmers market pays big bias bill**

**Women are ready to return to work**

**Workers want to date: Is that OK?**

## Can being difficult be a disability? 3 things a supervisor should know

*Employee with emotional disorder threatens others: What now?*

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 blow up?”

### 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 **Being difficult ...** on Page 2*

### Sharpen Your Judgment

## Older worker let go during restructuring: Bias?

HR manager Lynn Rondo’s morning was filled with the paperwork that accompanied her company’s recent restructuring.

Just when she thought about taking a break, company attorney Eric Bressler walked into her office. “Hi, Lynn. Remember Tom Jenkins?”

Lynn put down her pen and frowned. “The manager we let go?”

Eric nodded. “He’s suing us for discrimination. He thinks that his age was involved in the decision.”

### More qualified

“What? He was only let go because his department merged with another one!” Lynn said. “It’s unfortunate that his position was consolidated, but we didn’t need two people doing one job.”

“So the manager from the other department got it?” asked Eric.

“Janet, yes,” said Lynn. “We took note of age when we were comparing her and Tom, but that was only to have the info on record.

“Janet had more industry experience, consistently made higher numbers than Tom in her department, and not to mention, her recent performance reviews were glowing. That’s why she was picked for the job.”

“Not because she was younger,” Eric confirmed.

“Absolutely not!” said Lynn.

When Tom filed the ADEA claim, the company fought to get the case dismissed.

Did it win?

*Make your decision, then please turn to Page 4 for the court’s ruling.*

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.

# Being difficult ...

(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 filed a lawsuit against the company. He claimed that while he 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. In this instance, the "duties" entail 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:

The 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 major duties
- Refrain from asking employees about the specifics of their conditions – though you may ask if or how the condition affects the ability to perform major duties, and
- Avoid including the disability in the decision-making process for granting promotions or other benefits.

## TEST YOUR KNOWLEDGE

### What can be learned from the Great Resignation

The Great Resignation is the informal name given to the widespread trend of a significant number of workers leaving their jobs during the COVID-19 pandemic. It's sometimes also called the Big Quit.

To test your knowledge of how much workers' attitudes have changed, answer *True* or *False* to the following:

1. While record numbers of employees resigned this year, studies show that those who stayed working are quite content with where they are professionally and occupationally.
2. Your older and younger employees have been driving the resignation trend, while those in the 30 to 45 range have generally stayed put.
3. The highest turnover rates were in the retail field, where generally lower wages and uncertain work schedules fueled the departure of sales employees.

## ANSWERS

1. *False.* According to a workplace study by Oracle, 83% of the global workforce say they want to "advance their career or make career changes over the next year." And 73% of them said they're motivated to do it now. Tip: If you offer the right tools to help them grow, they'll stay put.
2. *False.* According to the Harvard Business Review (HBR), those between 30 and 45 have had the greatest increase in resignation rates, with an average increase of more than 20% between 2020 and 2021. While turnover is typically highest among younger employees, resignations actually decreased for those 20 to 25, HBR reported.
3. *False.* Healthcare and tech saw the highest turnover, mostly due to the extreme increases in demand due to the pandemic, which in turn led to increased workloads and burnout.

### 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.*

### Farmers market pays \$280K for disability bias

**What happened:** SFM, LLC, doing business as Sprouts Farmers Market at locations throughout Colorado, settled a lawsuit claiming the company denied employment to applicants because of their disabilities and denied them reasonable accommodation in the application and hiring process.

According to the lawsuits filed by the EEOC, after Sprouts managers contacted the applicants to interview them for available positions in Colorado, the applicants requested the assistance of an American Sign Language (ASL) interpreter for their interviews.

The EEOC alleged Sprouts managers failed to make any arrangements for ASL interpreters and ignored the applicants when they followed up about their requests for an accommodation and the interviews.

**Decision:** Along with agreeing to pay \$280,000, the firm agreed to review and revise its ADA policies, adopt written guidance on reasonable accommodations and provide ADA training.

**Cite:** EEOC v. SFM, LLC.

### Sports bar pays \$217K for sexual harassment

**What happened:** The male spouse of the owner of both the Route 22 Sports Bar, Inc., and the Crazy Mexican Restaurant & Grill, LLC, both in Weirton, WV, subjected a female bartender and other employees to severe,

unwanted and offensive sexual harassment, including luring female employees to his secluded office, propositioning certain female workers for sex, and subjecting them to unwanted sexual touching and comments.

Other male co-workers also frequently sexually harassed female workers. The restaurant retaliated against the female bartender for complaining about the harassment by firing her.

**Decision:** Along with paying \$217,000, the restaurant agreed to prohibit the owner's spouse from holding any supervisory position and institute a "robust" anti-sexual harassment policy.

**Cite:** EEOC v. Route 22 Sports Bar, Inc., et al.

### Holiday Inn pays \$30K for pregnancy discrimination

**What happened:** The operations manager of Awon Phie LLC, doing business as Holiday Inn Express North Padre Island, Corpus Christi, TX, told an employee she was a "liability" because of her pregnancy and fired her.

**Decision:** Along with paying \$30,000 to settle the lawsuit, the hotel agreed to hire an equal employment opportunity consultant, revise its policies and procedures to ensure compliance with federal equal employment opportunity laws and regulations, and provide anti-discrimination training for managers and all employees.

**Cite:** EEOC v. Awon Phie LLC, d/b/a Holiday Inn Express North Padre Island.

## STOP, LOOK, LISTEN ...

### Women ready to return to workforce in STEM jobs

According to a new MetLife survey, 63% of women who left the workforce at the height of the pandemic are ready to return.

Of those who want to get back to work, 80% are considering careers in science, technology, engineering and math (STEM).

This gives employers in these industries a great opportunity to attract female talent by offering the benefits and support they need to succeed.

#### Meeting halfway

For example, MetLife does its part for gender equality through programs such as technical internships, trainings and peer mentoring to equip women with the tools to excel in STEM fields.

So what kind of support are women specifically looking for? Here's what MetLife's survey revealed:

- More diversity and inclusion in company leadership (38%)
- Benefits that better fit their needs (33%)
- More flexible work arrangements (31%)
- Training that helps them advance in their careers (30%)
- Paid internships (29%), and
- Employee resource groups (28%).

While many woman want to get back to work, they need employers to meet them halfway.

"We need to ensure that women are inspired and empowered to grow their careers by addressing what companies can do to support women at this pivotal moment," says MetLife's Chief HR Officer Susan Podlogar.

One in three of the women who are interested in a STEM career aren't sure where to start, so it's up to companies to help guide them.

Offering this kind of support will certainly help employers deal with the "Great Resignation" and other hiring issues right now, while increasing company diversity.

## SUPERVISORS SCENARIO

# Can supervisor order 2 employees to stop dating each other, or is this a case of MYOB?

## Workplace romance raises question of 'subordinate' relationship

Sandy started speaking as soon as she and Sue were seated: "I'm letting you go for violating our policies and not revealing your relationship with Tony."

"What?" Sue howled. "What's the big deal? Yes, we're dating, but so what? Aren't we allowed to date co-workers?"

"We are," Sandy confirmed. "But this is different. You referred Tony and had a hand in choosing him over other applicants. Plus, you're in charge of his training, which gives you input on his progress reviews."

"So you think I gave him some unfair advantage in the selection process?" Sue asked. "Or that I'm incapable of rating his progress fairly?"

### The requirement

"It certainly calls into question whether you can deal fairly with him, but let's forget that for a minute," Sandy said.

"Let's talk about the fact that all employees here are required to tell their bosses about any relationships with a subordinate."

"First, he's not my 'subordinate,'" Sue argued. "I train him, but I'm not his boss – you are. And I didn't have the final say on his selection – you did. So I didn't have to let you know we were dating."

"That's not how I see it," Sandy said. "My decision stands to let you go."

After the termination, Sue sued the company for violating her privacy. She said there was no ban on co-worker dating, and her and Tony's work situation didn't meet the "subordinate" requirement of the company's policy.

**Decision:** The company won. A judge said the supervisor had made a fair and just interpretation of what constitutes a subordinate relationship, and the policy did apply in this instance.

**Key:** The supervisor correctly assessed the working situation between the employees and noted that one indeed had significant influence over the other's employment and reviews. At the least, that violated the spirit of the policy.

*Case: Owens v. Old Wisconsin Sausage Co.*

### What you need to know:

Courts have ruled generally that employers can't bar romantic relationships between employees unless there's just cause. What would be considered just cause?

- If one employee directly supervises the other, and
- If one has significant input into whether the other gets hired, fired, promoted, or benefits from other forms of advancement.

Outside of those instances, employees will have a reasonable case for invasion of privacy if they're barred from having a romantic relationship at work.

## Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes, the company won when a court granted summary judgment and dismissed the lawsuit.

Tom's attorney cited the references to the two managers' age during the comparison process as an indicator of the company's age bias.

The company only used experience and performance as a pretext for age discrimination, his attorney said.

But the court disagreed.

Merely asserting an employee's age, even in the context of comparison, does not establish bias.

The court further explained that the company provided enough legitimate, nondiscriminatory reasons for termination. Existing documentation

supported the claim that Janet had more experience and consistently outperformed Tom during reviews, and nothing in these files indicated a discriminatory intent.

### Document, document

It's vital for managers to keep accurate records. If the company was not able to support their claims about Janet's credentials, the case could've gone in a different direction.

Processes like restructuring that entail layoffs or shifts in job responsibility are a breeding ground for these types of claims. The best way to protect yourself is thorough documentation.

*Case: Zabala-De Jesus, et al v. Sanofi-Aventis Puerto Rico, Inc.*

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