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January 3, 2022

OUR TOP STORY

Pregnant worker asked for a desk job, boss said 'no'

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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

Tripped up by termination rules?

Greyhound pays for religious bias

Spot fake COVID vaccination cards

Rules are rules: Even for lunch

Did this supervisor do enough to accommodate mom-to-be?

Here's why this case went the employer's way

Jill plopped down into the padded chair in Maya's office, then leaned her head back and looked silently at the tile ceiling.

"Ah yes, the joys of pregnancy," Maya chuckled. "Take a load off."

"Thanks," Jill said. "It's only a few more months now."

"You're doing great," Maya encouraged her. "So, did you want to talk to me about time off after the baby's born?"

"No, something more immediate than that," Jill replied. "I was at the doctor's for a checkup yesterday, and he said that in about a month, I'll pretty much have to

stay off my feet. Because of that, I wanted to talk to you about putting me on a desk job then."

"That could be a problem," Maya said.

No wiggle room

She continued: "For one thing, I don't have a 'desk job' I can put you on. You know how tight hiring's been around here. There's not much wiggle room. And we're under a lot of pressure to produce."

"I realize all of that," Jill agreed. "But I figured it would only be a month or two

*Please see **Do enough?** ... on Page 2*

Sharpen Your Judgment

Is firm automatically liable for harassment?

HR manager Lynn Rondo was about to enjoy her first cup of coffee when employee Stephen Holder barged into her office.

"I thought you should know I'm quitting, and I'm suing for what happened with Carl," Stephen said.

Lynn eyed her cup. She hadn't even had a sip.

"Whoa, slow down," Lynn said. "We took your sexual harassment claim very seriously. We demoted Carl right away and put you two in different departments."

"Not good enough. He was my supervisor, and my lawyer says I can still sue the company," Stephen said.

"Now hold on," Lynn said. "Carl may have given you assignments, but he wasn't your supervisor. He

never had the authority to fire or promote you."

"He said he was my supervisor," Stephen fired back. "Everyone else called him a supervisor too."

Harassment stopped?

"I'm sorry for what happened, but we took action," Lynn said. "After we intervened, did Carl harass you again?"

Stephen reluctantly shook his head. "No, but I just can't work here after all this. I still see him sometimes. You need to be held responsible for him ruining my job."

Stephen sued, claiming the company was liable because he was harassed by his supervisor. The company fought to get his lawsuit thrown out.

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.

Do enough? ...

(continued from Page 1)

more before I gave birth, so it wouldn't be any big deal."

"It is a big deal," Maya noted. "But let me run some numbers and talk to a few people before I make a final decision."

"OK," Jill nodded. "I hope we can work something out on this."

A few days later, the two met again, and Maya got right to the point: "I have some bad news."

"You mean I'm not going to get the desk job?" Jill asked.

"Well, that's right, but there's more," Maya said.

"I'm going to have to let you go. If you want to come back to work after you have the baby and we have an opening, I'll be happy to ..."

Why now?

"Hold on," Jill exclaimed. "You're firing me now? Why?"

"Here's the situation," Maya began. "I don't have a light-duty job for you, meaning I'd have to let you go in a few weeks anyway. I need to hire someone immediately to fill your slot. We have a big contract to meet, and if we don't, we're sunk."

"I don't believe this," Jill responded. "You're firing me because I'm pregnant!"

"No," Maya insisted. "I'm letting you go only because you told me you're going to be unable to

do your job, and I need someone to fill in now. Like I said, call me after you give birth and we'll see if something else opens up."

She sues

Right after that, Jill sued the company for violation of the Pregnancy Discrimination Act and the Americans with Disabilities Act.

She argued that her supervisor should have:

- figured out a way to fit her into a light-duty job, and
- kept her on at least until she required light-duty work.

The company said there simply was no light-duty job available and that business pressures made it necessary for the supervisor to fill the vacancy right away.

Decision: The company won.

A judge agreed the firm couldn't be expected to create a desk job.

The judge also OK'd the firing but ordered the company to pay the employee for the period between the firing and the time when she would have needed a light-duty job.

Key: As tough as the supervisor's decision was, it was made strictly on the basis of legitimate business needs.

That's often a reasonable defense in cases involving requests for special accommodations.

Case: Cadenas v. Butterfield Health Care.

What you need to know:

The law generally treats pregnancy and disabilities roughly the same, in that supervisors must consider whether reasonable accommodations can be made for employees in either category.

What's a "reasonable" accommodation?

- It should be feasible according to the resources available. Usually, the larger the company, the greater the resources available.
- It shouldn't exempt the employee from performing the major tasks of the job.
- It can comprise flexibility in scheduling, including part-time, if practical.

TEST YOUR KNOWLEDGE

Key things to know about 'wrongful termination'

A wrongful termination claim can be filed in a court of law if an employee believes he or she has been "illegally" fired from the job. Such claims generally result from an alleged violation of federal or state laws.

In many cases, it may boil down to a mere difference of opinion in how the employee and employer perceive things.

To test your knowledge of wrongful termination lawsuits, respond *True* or *False* to the following:

1. Any termination that seems unreasonable amounts to wrongful termination.
2. In most states, you can fire an employee for voting for a certain political candidate.
3. When an employee quits on his own accord, without giving any stated reason or notice, he cannot sue for wrongful termination.

ANSWERS

1. *False.* In most states, where the prevailing legal principle is "employment at will," people can be fired at any point in time. The employer can do so for any legal reason Harsh as that may sound, the employer can even fire someone for chewing gum or for violating any workplace policy.
2. *True.* Only four states, California, Connecticut, South Carolina, and Louisiana, have statutes that protect an employee's right to freely express political views. But generally, not that it's a good idea, you can dismiss employees for their political leanings.
3. *False.* There are occasions when an employee finds the work environment too hostile, intolerable or dangerous to continue working. They feel the only choice they're left with is to quit. This is known as constructive discharge.

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.

Medical center pays out \$450K for disability bias

What happened: Willis-Knighton Medical Center, Shreveport, LA, required employees who exceeded a fixed leave-and-light-duty cap to be fully fit for duty, and have no restrictions, regardless of whether those employees could perform the essential functions of their jobs with or without reasonable accommodations.

Willis-Knighton fired employees who exceeded the cap, rather than engaging with them in a meaningful interactive process about reasonable accommodations, according to the lawsuit filed by the EEOC.

Decision: Along with paying \$450,000, Willis-Knighton agreed to rescind its leave-and-light-duty cap and change its policies on reasonable accommodations. It will also ensure that its policies provide a process for an employee to report discrimination,

Cite: EEOC v. Willis-Knighton Medical Center.

Firm hit for same-sex sexual harassment

What happened: The male owner of Shelley's Septic Tank, Inc., Orlando, repeatedly made sexually charged comments to a male employee. The owner also engaged in unwelcome physical contact with the employee.

After repeatedly objecting to the inappropriate conduct, the employee reported the conduct to the sheriff's office in an effort to end the harassment.

Shortly after the employee's complaint, sheriff's deputies informed the owner of the employee's allegations, and the owner indicated that he would retaliate against the employee.

He fired the worker the day after he complained to the sheriff.

Decision: The owner agreed to settle the complaint for \$82,500 and to strengthen the company's anti-discrimination efforts.

Cite: EEOC v. Shelley's Septic Tank, Inc.

Greyhound Bus pays \$45K for religious bias

What happened: A Muslim woman whose religious practice included wearing an abaya in public applied to be a driver in Greyhound's training program in Baltimore.

Greyhound accepted the applicant and notified her that she could not wear the abaya.

Greyhound advised that she would have to wear its uniform, with slight modifications, but positively rejected the abaya. Greyhound said it believed that this accommodation was sufficient because it was accepted by another Muslim employee.

Decision: Along with paying \$45,000, Greyhound agreed to provide training on religious accommodations that addresses the importance of interactive communication and flexibility in discussing potential solutions that resolve the conflict between a genuinely held religious belief and some aspect of an individual's employment.

Cite: EEOC v. Greyhound Lines.

STOP, LOOK, LISTEN ...

Fake vaccination cards are popping up everywhere

With more employers enacting mandatory COVID-19 vaccination policies – and OSHA's emergency temporary standard (ETS) requiring many companies to have these policies in place in January – some employees are taking extreme measures to get out of it.

Some try to avoid vaccination mandates by citing religious beliefs or medical conditions, but a more devious method has been cropping up more and more.

Fake vaccination cards are on the rise. Anti-vax employees are willing to do a lot to avoid getting the shot, including paying several hundred dollars for false documentation.

\$200 a pop

Recently, a New Jersey woman was caught selling fake vaccination cards on Instagram for \$200. For an extra \$250, her "customers" could get their names added to their state vaccination database to make their vaccination status look even more legitimate.

While fake vaccination card sellers exist, many people are making them on their own – and the consequences of a \$5,000 fine or five years in prison aren't stopping them.

How to spot a fake

Here are some things to look for, courtesy of employment law attorney Kevin Troutman of the firm Fisher Phillips.

- No vaccination lot number or date
- Misspellings
- Inconsistent dates between doses
- Unfamiliar provider name
- Wrong type of paper
- Irregular borders

If you discover an employee has provided you with a fake vaccination card, it's up to you to decide what level of discipline is appropriate. Many employers decide to terminate any offenders to show other employees the severity of the offense.

SUPERVISORS SCENARIO

Boss needed everyone to pitch in on project, but worker said he was going out to lunch

Worker claimed he was fired for refusing to follow an unlawful order

“Where are you going?” Nick said to Alex as he headed for the door.

“To get some lunch,” Alex answered. “I’ve been working six hours straight, and you know I have a low-blood-sugar problem. I have to get something to eat.”

“Look, I told you we need all hands on deck to finish this order on time,” Nick said. “That means exactly what I said – everyone stays until we’re finished.”

“OK, this one time,” Alex grumbled. “But I’m telling you, Nick: I can’t go a long time without eating, and the law does say we have to have a lunch break.”

“Yeah, whatever,” Nick sneered as he turned to walk away. “Just finish – now.”

The next week ...

The next week, Nick addressed his group in the morning:

“We have another big order that has to be finished by 5 o’clock today. You know what that means. Everyone keeps working until it’s done. Any questions?”

Alex said, “I have one. You know my

situation with eating. When can we take a lunch break?”

“You’ll just have to grab something on the fly,” Nick answered. “No breaks. This is about keeping a customer’s business.”

“I can’t do that,” Alex replied.

Instead of following the order, Alex insisted on taking a lunch break, saying that he had that right under the law.

Nick eventually fired him for refusing an order to work. And Alex sued the company for mandating an illegal work schedule.

The company fought the suit by arguing that pressing business made the schedule a business necessity.

Decision: The company lost. A judge ruled that an employee couldn’t be fired for refusing to follow an unlawful order, no matter how pressing the business was.

Key: Supervisors are obligated to follow labor laws – no exceptions. There’s no such thing as bending the law “just this once” because of a tight schedule.

Case: Bonidy v. Vail Valley Center.

What you need to know:

Even though many workplaces operate informally with regard to rules on schedules and other conditions, supervisors must be aware that certain regulations must be followed, such as those that govern:

- Breaks, work schedules and overtime. Federal and state laws mandate the rules on such situations.
- Safety and security. Employees cannot be asked or ordered to violate regulations.

When in doubt, check with HR about the best way to proceed.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes. The company won when a court determined that Carl was not Stephen’s supervisor, and the company took reasonable and swift action to stop the harassment.

Even though many employees called Carl a “supervisor,” he did not meet the legal definition of a supervisor needed to assign liability for Carl’s harassing behavior to the company.

If Carl had been “empowered by the employer to take tangible employment actions against the victim,” he would’ve been classified as a supervisor, which could’ve made the company liable for his behavior.

Such actions could’ve included discipline or making changes in pay.

The court also ruled the company handled the

harassment claim correctly by separating the employees. The harassment ended after that, which showed the company exercised reasonable care to correct the behavior.

Respond quickly, decisively

This case reinforces the importance of taking action to stop harassing behavior right away. If the company had ignored Stephen’s claims or not put a stop to the harassment quickly, it may have lost this case.

Here the company took the incident seriously, and it was able to prove that in court (which can be just as important to avoiding liability).

Case: Hylko v. Hemphill and U.S. Steel Corp.

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