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February 1, 2022

OUR TOP STORY

Here's what the NLRB says about having co-workers at disciplinary meetings

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7 questions to ask yourself before deciding whether to fire someone



INSIDE

Key mistakes new managers make

Florida resort hit for religious bias

Expert managers share expert ideas

On the hook for pregnancy bias

Employee wants co-worker at disciplinary meeting: Is that OK?

Supervisor wanted to discipline employee alone

“Could you have been any ruder to that customer?” Sales manager Mel Greenley asked.

“How do you expect him to buy anything when you say that to him?”

“That guy is an idiot,” Jack Farley said, setting his headset down on his desk. “First he says he wants this, then he wants that. Then he doesn’t want anything. He changes his mind every five minutes.”

“He can change his mind every five seconds so long as he buys from us,” Mel said firmly.

“You just can’t go and treat people like

that. C’mon, I wanna see you in my office.

“Well, is this a disciplinary meeting?” Jack asked.

“What do you think?” Mel said rhetorically.

Anne knows

“I think I want Anne to come and sit in this meeting with me,” Jack said.

“What’s Anne got to do with it?” Mel said.

“She’s dealt with this guy lots of times before,” Jack explained. “Anne can vouch

*Please see **That OK?...** on Page 2*

Sharpen Your Judgment

Depressed worker fired for making threats

“Lynn! Good that I bumped into you,” attorney Eric Bressler said, strolling into the kitchenette with a fresh bagel in his hand.

“I need to update you on Delilah Potts.”

“Delilah,” Lynn repeated. “How’s she doing? I’ve been thinking about her a lot.”

“I think she’s doing better. She’s in intensive therapy,” Eric replied.

“But she’s suing us for firing her.”

Safety concerns

Lynn stopped cold. “Are you serious? We had no other choice!”

“Walk me through what happened,” Eric said.

“A few years ago, Delilah was diagnosed with major depressive disorder,” Lynn said.

“She opened up to me about her struggles and suicidal thoughts, but she was in treatment. She was doing well.”

“What happened?” Eric asked.

“She began threatening to hurt herself and her son,” Lynn said. “We were very concerned for her safety and her son’s – not to mention the safety of everyone here. We had to let her go.”

“Delilah is saying the depression made her say those things, and we’re violating the ADA by firing her for it,” Eric replied.

When Delilah sued for an ADA violation, 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.

That OK? ...

(continued from Page 1)

for how hard he is to work with, and how often he can just waste your time by changing his mind and leaving you hanging.

“Anne can tell you about how she spent all morning making a deal with this guy and then he called her back mid-afternoon and canceled.”

Just you and me

“No, no Anne,” Mel barked. “This is just between you and me for now.”

“Well, if Anne can’t come then I’m not going to sit in there by myself and get chewed out by you,” Jack said.

“If you were really concerned about this, you’d want to have her in there.”

“I don’t know where you think you’re going with this,” Mel said.

“This isn’t a union shop,” he added. “We don’t have any labor agreements, so you don’t have a right to have a co-worker present at a disciplinary meeting.”

“Now get into my office, or you’ll be looking for a new job.”

One last chance

Jack sat up straight, but didn’t move from his chair.

Mel turned red with anger, and gave Jack one last chance to meet him in his office.

“Now come on with me, or else,” Mel said.

Jack ignored Mel. He put on his headset and dialed another customer.

Insubordination?

When Jack came to work the next day, Mel told him he was being fired for insubordination.

Jack hired a lawyer and filed a complaint with the National Labor Relations Board (NLRB).

Jack’s lawyer argued that even though there was no labor union or labor agreement in effect at his place of employment, Jack had a right to have a co-worker present at a disciplinary hearing.

The company maintained Jack was let go for insubordination. It was as simple as that.

Decision: The firm lost.

The NLRB ruled that employees are entitled to have a co-worker sit in

on a disciplinary hearing – even in non-unionized workplaces – and an appeals court upheld that ruling.

Key: If you need to meet with an employee for a discipline issue, and the employee requests a co-worker be present, avoid saying “no” right off the bat.

Instead, contact your HR office and get their input on how you should proceed.

Case: NLRB v. Epilepsy Foundation of NE Ohio.

What you need to know:

If an employer is meeting with an employee to discuss a situation and determine whether disciplinary action against the employee is warranted, the employee has the right to have a co-worker present.

However:

- If the purpose of the meeting is solely to inform the employee of disciplinary action, the employee does not have the right to have a co-worker present.
- If a non-unionized employee does not request the presence of a co-worker, that employee cannot then sue the employer for failure to allow a co-worker to be present at the meeting.

TEST YOUR KNOWLEDGE

Avoiding the key mistakes many new managers make

It would be great if managing was 100% science – plug a few details into a proven formula, push the “Enter” key and viola – improved motivation and productivity. In reality, though, managing is as much art as science.

To test your knowledge of key mistakes new managers tend to make, respond *True* or *False* to the following:

1. In spite of what you might’ve been told, after you’ve been promoted it’s essential to keep doing your old job well. It’s how you’ll build respect.
2. The four components of successful management are follow orders, make the people above you look good, gloss over mistakes and take credit whenever you can.
3. One of the most common misunderstandings about delegating is that giving authority to others means a manager is giving up control of the work.

ANSWERS

1. *False.* One main reason new managers continue trying to do their old jobs is they haven’t yet learned how to delegate work effectively. They hang on to every little task themselves, end up trying to do both jobs and, eventually, burn out.
2. *False.* The four components of successful management are:
 - a. Plan the work
 - b. Organize the team
 - c. Assign and direct the work
 - d. Monitor the results and make adjustments.
3. *True.* It is a common misconception that delegating means abandoning authority. But the opposite is true. Managers who are successful at delegating make sure employees apply the same criteria or reasoning they would themselves use to solve problems and achieve shared goals.

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.

Florida hotel out \$99K for religious discrimination

What happened: Noble House Solé, LLC, a resort hotel in Sunny Isles Beach, FL, accommodated a new employee's Sabbath observance for over 10 months after she began her employment. When a new supervisor came on board, Solé Miami scheduled the employee to work on a Saturday.

When the employee missed work, Solé Miami immediately terminated her, even though employees who missed work for non-religious reasons were usually given multiple warnings prior to termination.

Decision: Along with paying \$99,000 to settle the claim, Noble House Solé agreed to implement bias training for management and human resources personnel, educate its workforce, post a notice about the anti-discrimination laws, and adopt new language in its job applications.

Cite: EEOC v. Noble House Solé, LLC.

Father/son trucking firm out \$500K for gender bias

What happened: Stan Koch and Sons Trucking, Minneapolis, used an employment test that disproportionately excluded women from driving positions. A federal judge ruled that the test disproportionately screened out women who had been given conditional offers of hire by Koch to work as truck drivers or who were already employed by the company and were required to take the test to return to work

following an injury.

In addition, the judge found that Koch did not present evidence to show that the test was job-related and consistent with business necessity.

Decision: Along with paying \$500,000, Koch agreed to make job offers to a class of women whose job offers were revoked by Koch after they failed the test.

Cite: EEOC v. Stan Koch and Sons Trucking.

Carrabba's pays \$690K for sex harassment claim

What happened: A managing partner of Carrabba's Italian Grill, LLC, and also OS Restaurants Services, LLC, both of Brandon, FL, which provides staff to restaurants across the country, subjected female employees there to sexual harassment.

Decision: In addition to paying \$690,000 in monetary relief, which will be distributed among female employee victims, Carrabba's and OS Restaurant Services will implement a new sexual harassment policy and new sexual harassment investigation procedures in its restaurants across the United States and will train certain HR and management officials on sexual harassment.

The EEOC said the agreement will help to ensure that sexual harassment complaints are properly addressed for Carrabba's thousands of other employees.

Cite: EEOC v. Carrabba's Italian Grill, LLC and OS Restaurants Services, LLC.

STOP, LOOK, LISTEN ...

5 expert management ideas from the experts

Here are five tips to manage the little things so the big things run better.

Give up ownership

Let employees own decisions once you've had a spirited debate, challenging them to think through their assumptions and consider a few outcomes.

Give them encouragement and space, suggests Jan Chong, VP of Engineering at Tally. One caveat: Don't give up full power on expensive or hard-to-reverse decisions.

Be a team captain

Take on the role of "coordinator of priorities" rather than "the authority."

This builds better teams that share successes and learn from failures, says Michael Papet, a database administrator at Edify Labs.

Show some vulnerability

Be human, not just the boss. Share one high – and try to focus on a team success – and one low each week.

Do it in a meeting or an email to build relationships and openness, says Sunita Mahanty, a product lead at Facebook.

Share interests

But don't make it all about business lows and highs. Share funny personal stories or anecdotes. They don't need to be significant or detailed, says Michelle Lee, an operations head at Subscript.

Just as important, listen when employees share personal, fun stories.

Offer ideas

Be the idea generator – and be willing to pass along the great ideas to your team with the continued confidence that they'll make them even better.

This helps employees feel supported and capable, says Camille Ricketts, a marketing head at Notion. They'll likely become more creative.

SUPERVISORS SCENARIO

Boss wasn't thrilled about worker's pregnancy leave; wasn't happy about the lawsuit, either

Was employee reading too much into Supervisor's initial reaction?

“So it looks like you're all set to take your pregnancy leave,” Susan said to Becky.

“I've moved some people around so we'll manage while you're gone.”

Becky frowned as she said, “See, that's the kind of comment from you that has me feeling uneasy about taking leave.”

“Why?” Susan said. “You're good to go. Relax and have your baby!”

“When I first told you I was pregnant and would need the leave, you didn't seem all that thrilled about it,” Becky said.

‘We talked about this’

“Let me explain my initial reaction,” Susan said. “When you asked to transfer into my group, we talked about how this was our busy season, and you said you'd be ready to do whatever was required. Then, when I bring you in, you tell me you're pregnant and need leave.”

“So you're right. Maybe I didn't sound thrilled at first.”

“And now you make another comment

that's discouraging me,” Becky insisted.

“I wasn't trying to discourage you,” Susan argued. “I was just letting you know I had things all worked out.”

Becky wasn't satisfied with Susan's explanation. She ended up suing the company for threatening her about taking pregnancy leave and violating the Pregnancy Discrimination Act.

The company responded by saying there were no threats and the supervisor fully followed the law by granting leave without questions or reservations.

Decision: The company won. The court's decision noted that there had been a couple of offhand comments, but they were in fact just that – offhand – and not designed to discourage the employee from taking the leave.

Key: The supervisor followed the spirit and letter of the law in processing the request and the leave without delay, even though she voiced a minor complaint about scheduling the leave.

Case: Holmes v. Petrovich Development Co.

What you need to know:

Nothing in the law says a supervisor must stay silent when an employee makes a leave request covered by the law.

Still, it's best to avoid any comments that appear to:

- indicate, even inadvertently, the employee's job or status is somehow in jeopardy
- refer to any scheduling or other workplace difficulties that will result from the taking of the leave, or
- coerce the employee into not taking, or even shortening, the leave.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes. The company won when a court dismissed Delilah's ADA lawsuit.

Delilah's attorney tried to argue the company violated the ADA because Delilah only made those threats as a result of her diagnosed depression.

The company was aware Delilah had mental health struggles and should've tried to accommodate and assist her before simply firing her.

The court disagreed. It said the company had supported Delilah when she was first diagnosed with her depression, and showed no bias against her and her condition.

The court went on to say that Delilah's threats were severe, and the company was rightfully

concerned about workplace safety. Threats of violence are a legitimate reason to take firm steps to ensure safety.

Hence, the company didn't violate the ADA, the court ruled.

Safety is paramount

This case goes to show that threats of violence don't ever have to be tolerated in the workplace – even if a person's disability is the reason behind the threats. Workplace safety always comes first.

Courts will generally side with employers who act reasonably after a threat has been confirmed.

Case: Todd v. Fayette County School District.

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