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March 14, 2022

OUR TOP STORY

**A workplace
friendship strays
into strained
territory**

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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

**Keys to better
negotiations**

**Gender bias
costs retailer \$5M**

**Struggling to stay
ahead of turnover?**

**Accommodation
was overlooked**

When ‘casual flirting’ crosses the line: Key steps to take

They’d worked together for years ... now what?

“It’s not a big deal, so don’t make a big deal out of it,” Supervisor Mike Kane said. “This kind of stuff happens.”

“Besides,” Mike added, “I’ve always known you to be pretty good at letting stuff roll off your back.”

“Roll off my back?” Sheila repeated. “Are you kidding me? You can’t expect me to put up with a co-worker pawing at me and following me around all day.”

“Oh, now let’s not go overboard,” Mike said. “I don’t see why all of a sudden you’re making a fuss about Barry flirting with you. He’s single. You’re single.”

“I mean, what do you expect me to do about it?” Mike asked. “You’ve worked with him for a lot of years.”

Have a chat

“I have a right to be protected from this kind of behavior at work,” Sheila replied.

“Now you are making a mountain out of a molehill,” Mike said.

“OK, OK,” he said. “I have a plan.”

“Why don’t you take Barry aside and have a little chat with him.”

“You can explain to him that his flirting

*Please see **Flirting ...** on Page 2*

Sharpen Your Judgment

Leave denied: Was it gender discrimination?

“I need more leave. I can’t make it any clearer,” said employee Bruce Hinton over the phone. “I’m not recovered, and I want an extension.”

Benefits Manager Betty Murphy mentally calculated what she knew: Bruce asked for medical leave five months ago, after he’d been out unexpectedly for a month. They granted him six month’s medical leave, which included one retroactive.

“I don’t know Bruce,” said Betty. “Your department really needs you here. Your teammates and supervisor are struggling.”

Derogatory comments

“I can’t believe you’d even bring up my supervisor,” Bruce said, his demeanor gaining

a hostile edge.

“After that guy made those awful comments about being transgender,” he continued.

“Sounds like this company has a problem with my identity more than my medical leave.”

“You never filed an official complaint on those alleged comments,” said Betty.

“But, I’ll tell you what. I’ll check on an extension. If we can’t do it, we’ll follow up to talk about something that will work.”

The company denied Bruce’s extension, and the only follow-up he did was file a gender discrimination suit.

The company fought the case.

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.

Flirting ...

(continued from Page 1)

has gone too far and it's causing you concern. He'll understand that, and then, Ta-dum, all fixed."

"You really want me to go chat with him?" Sheila said, her voice rising. "He's the last person I want to talk to right now!"

"Please don't be so stubborn about this," Mike asked her.

"Put yourself in Barry's place. I'm sure he never intended to make you upset.

"If I pull him into my office to talk about this, he'll be extremely embarrassed by it.

"I'm sure it will affect how you two work together."

"That's really not my problem," Sheila said.

"To be honest with you, Sheila, I just don't think this rises to the level of needing a supervisor to get involved."

"Well, you can be sure I'm not the one going to Barry about this," she insisted.

"Fair enough," Mike said. "That's fine. Problem solved.

"Now I don't want to hear any more about this."

Wasn't resolved

After Sheila went to her HR office to file a complaint, Mike met with her again.

"I thought this little matter had been resolved," he said.

"I made it very clear to you I am not going to confront Barry over this," Sheila said. "That's your job!"

Sheila takes action

Over time, Sheila's work relationship with Barry and her employer grew more strained.

First, her probationary period was extended.

Next, her expected salary increase was denied.

Then, her overall job performance rating dropped.

Sheila finally took action. She sued her employer, saying she was retaliated against for complaining about her co-worker's behavior.

The employer attempted to get the case dismissed.

Decision: The company was ordered to pay the employee \$17,500 and implement a list of internal changes, including

launching equal opportunity and anti-harassment training.

Key: This was clearly an open-and-shut example of illegal sexual harassment, and yet somehow the supervisor still saw it as mere innocent flirting.

Sometimes unraveling sexual harassment complaints can be difficult, but your employees need to know you'll do the right thing.

Case: U.S. Dept. of Justice v. Franklin Co. NC.

What you need to know:

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Supervisors must:

- Investigate allegations of sexual harassment, whether you believe them to be legitimate or not.
- Review the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred.
- Clearly communicate to employees that sexual harassment will not be tolerated.

TEST YOUR KNOWLEDGE

Key things to know about successful negotiations

If anyone ever needed top negotiation skills, it's frontline managers and supervisors.

After all, aren't you almost always in the middle, working toward what's best for employees and championing what's best for your company?

To test your knowledge of successful approaches to negotiating, respond *True* or *False* to the following:

1. The No. 1 thing every good negotiator should keep top of mind is staying focused on what you want and how you'll get it.
2. When you set out to negotiate, it pays to make your request feel like the most important matter of the day.
3. It's best to leave wiggle room when negotiating, knowing what you'll compromise on, what the other side is likely to compromise on and what could be contentious.

ANSWERS

1. *False.* Experts say the better bet is to focus on what the other side needs and how you can help them get it. You're the vehicle for the change you want, not a roadblock to what the other side wants. For instance, if you're negotiating for your own promotion, focus on the responsibilities you'll take up and alleviate for the boss.
2. *False.* When you set out to gain something, recognize that you aren't the only one pinning for more time, money, attention or resources. What really pays off is how you differentiate yourself and your cause.
3. *True.* You always want to try to offer a few things to the other side. Consider all the issues you want resolved. Then look at several ways that could happen. You can mix and match issues and solutions to create a few options to put out there.

Answers to the quiz:

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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.

Car dealers pay \$150K for disability discrimination

What happened: Auto dealers Victory Automotive Group, Inc. and Cappo Management XXIX, Inc., terminated a title clerk working at their Sacramento, CA, dealership over fears that she might have cancer.

The employee had missed several days of work due to a sudden illness, and then informed management that she had been hospitalized and was undergoing testing for cancer.

The employer, which operates 40 dealerships across the U.S., promptly fired the employee a day before her anticipated return, despite a medical release allowing her to work. Her termination letter advised her to “focus on her health,” and confirmed that her termination was not related to her job performance.

Decision: Along with agreeing to pay \$150,000 to settle the claim, the employers also agreed to provide training on the ADA and report results to the EEOC.

Cite: EEOC v. Victory Automotive Group, Inc. and Cappo Management XXIX, Inc.

Delivery service out \$50K for discriminatory actions

What happened: An employee at Tampa Bay Delivery Service, LLC, an Amazon delivery service provider in the Tampa Bay area, requested to take off Sundays to attend church services.

When Tampa Bay Delivery Service scheduled the employee for a Sunday shift, the employee reminded the dispatcher that he

could not work on Sundays due to his religion.

He was terminated when he failed to show up for the Sunday shift.

Decision: Along with agreeing to pay \$50,000, the employer will provide training on religious discrimination to ensure that managers and dispatchers are aware of their obligations to prevent workplace bias.

Cite: EEOC v. Tampa Bay Delivery Service, LLC.

Furniture retailer pays \$5M for gender bias

What happened: American Freight Management Company, LLC, which does business as American Freight Furniture and Mattress, of Birmingham, AL, engaged in a nationwide pattern or practice of sex discrimination against qualified female job applicants for sales and warehouse jobs at the company’s retail stores.

The EEOC alleged managers discarded job applications submitted by women. It also alleged managers made a number of comments that showed their hiring decisions were tainted with bias and sex stereotyping.

For example, it alleged that women would not “do as great a job at selling furniture as men,” could not work in the warehouse because “women can’t lift,” and female employees would be “a distraction” to male employees.

Decision: The firm agreed to settle the claim for \$5 million.

Cite: EEOC v. American Freight Management Company, LLC.

STOP, LOOK, LISTEN ...

Staying ahead of turnover

Can HR stay ahead of turnover in 2022? It’s a tall task, but if you’re proactive, you can do it.

Here are some keys to keep good employees and improve your overall company culture.

Make stay interviews a mainstay

Stay interviews work. And they aren’t just a tool for HR professionals to use. You’ll want to train frontline managers – the people who have the biggest impact on employee satisfaction and engagement – to regularly do stay interviews.

The stay interview – that informal talk between HR or boss and employee – isn’t new. But it’s never been more important.

When you chat, focus on:

- what motivates employees to stay now
- what they like and don’t about their role
- the part of their workplace experience they’d improve, and
- their career development goals.

No two stay interviews (or stay conversations) will sound the same. HR pros and frontline managers will need to tailor questions and direction to each employee at any given time to stay ahead of turnover.

Some questions and subjects you’ll want to cover:

- How do you feel in your role?
- What motivates you to show up for work every day?
- What are some of the challenges you face that prevent you from delivering your best outputs, and what do you think the team and company can do to help eliminate these challenges?
- Are you able to find a positive work/life balance? If not, what can we do to help?
- Is there anything you don’t enjoy working on? Anything you want to work on more?

SUPERVISORS SCENARIO

Supervisor always treated people fairly, but wasn't aware of employee's accommodation

Employer called it an oversight – Why didn't worker just speak up?

“This is embarrassing, but I really do have to go to the bathroom, NOW!” Maria Mullins pleaded. I really can't wait one minute longer.

“Maria, I told you the first two times you asked, and I'm telling you again, you'll have to wait until your break,” Supervisor Joe Henley told her.

“But Joe, this is important,” she said. “Our other boss always let me go when I had to. You see, I have this problem.”

“I'm sure the old boss let you do lots of things,” Joe said. “But when I'm in charge, we follow the rules, OK?”

“So please, don't ask again.”

Nothing would get done

“You don't understand,” Maria replied, tears coming to her eyes.

“Maria, I can't let you go just because you say you have to,” Joe told her. “What if everyone suddenly wanted to run off to the bathroom at the same time, whenever they felt the urge? Nothing would get done around here.”

“You need to stay at your work station until your break,” he reiterated. “Those are simply the rules. I don't make them.”

A brief moment later, Joe turned as he heard Maria's muffled sob as she ran out the door.

After this most embarrassing incident, Maria sued her employer for failing to accommodate her bladder problem.

Decision: The employee won and was awarded \$200,000.

The firm had argued that it had always accommodated the employee's needs, except for this one time.

On this occasion, the company said, the employee should've known to just go to the bathroom without her supervisor's direct permission.

But the firm lost because management had failed to tell the new supervisor about the employee's needs.

Key: There's little credit for past performance when it comes to the ADA. It only takes one screwup to break the law.

Case: A.M. v. Albertsons LLC.

What you need to know:

Employers must provide a reasonable accommodation to an employee or applicant with a disability, unless doing so would cause an undue hardship.

- It is illegal to harass an applicant or employee because he or she has a disability, had a disability in the past, or is believed to have a disability.
- Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes. The company won when the court dismissed the suit.

An attorney for the employee claimed he suffered gender discrimination because he was transgender. His boss's negative comments about transgenders proved there was a culture of bias.

The company's attorney argued there was no proof of gender discrimination or that any non-transgender employee with a similar job and supervisor, who engaged in the same conduct as he did, received more favorable treatment.

Therefore, the employee didn't suffer any employment discrimination. He simply requested a leave extension, and it couldn't be granted for legitimate business reasons.

The court agreed: The employee was granted fair and deserved leave. But he didn't provide facts sufficient to support an inference of transgender discrimination. So he didn't suffer any discrimination.

Treated equally

The key to this win: The employee couldn't prove that any cisgender employee in a similar situation was treated differently, specifically more favorably, than him.

Managers want to follow existing policies to handle requests consistently. If something is done for one employee, document it and treat similarly situated employees in the same manner.

Case: Olivarez v. T-Mobile USA.

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