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April 13, 2022

## OUR TOP STORY

**Boss thought he wore the pants – until a judge set things straight**

## ONLINE

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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

**Pros and cons of hybrid schedules**

**Eye care group loses bias claim**

**Being and staying productive: 3 keys**

**She was a shoo-in but he got the job**

## Worker's 'inappropriate' attire gets boss slapped with lawsuit

*Good intentions, but all the wrong words*

“We can’t have you walking around here looking like that,” Supervisor Ed Milton said.

“Are you talking to me?” Lisa asked.

“Well, maybe not you *per se*,” Ed replied. “I mean women here in general.”

“Good,” she snipped. “Because my clothes are not inappropriate.”

“And it’s 20 degrees out, so it’s not like I’m gonna come to work in a bikini top.”

“My point,” Ed said, “is we’re trying to look professional in front of customers. So that’s why I’m going to ask you to put this jacket on.”

He extended his arm, with a navy blazer draped over his forearm.

Lisa stared past the jacket. She was checking out Ed’s clothes.

### Cover up?

“You’re not wearing a blazer,” she said.

“Of course not,” Ed replied. “I don’t have anything to cover up like you do. The only thing hanging out on me is my gut.”

“Besides, I don’t make the rules around here, I just enforce them.”

“Men wear khaki pants and a company

*Please see **Boss slapped ...** on Page 2*

## Sharpen Your Judgment

### Longtime employee with anxiety gets fired ...

**H**R manager Lynn Rondo was reviewing resumes when company attorney Eric Bressler came by.

“Lynn, we need to talk about Sam,” Eric said. “He’s suing us for disability discrimination.”

“I was afraid Sam would try something like this,” Lynn said. “But we’re in the right here, Eric.”

“Really? A longtime employee with documented anxiety issues is fired for simply being late – that doesn’t sound good,” Eric said.

#### Wouldn’t work with us

“Yes, Sam did have anxiety issues,” Lynn said. “And we tried to work with him and accommodated his many absences. But in the end, he refused to try to work with us.”

“What do you mean?” Eric asked.

“Sam was a point person for our customer service team, and his job description said he needs to be on time,” Lynn said. “He must be here to talk to clients and relay messages to other departments, but he was constantly arriving late.”

“When I told Sam he had to be here during normal office hours – and that he’d racked up lots of unexcused absences – he asked if he could make up the missed time by staying late as an accommodation.”

“What happened?” Eric asked.

“I said no, and we fired him when he kept arriving late,” Lynn said.

The company tried to get Sam’s ADA lawsuit thrown out. Was it successful?

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.*

# Boss slapped ...

(continued from Page 1)

shirt. Women wear khaki pants, a polo shirt and a navy blazer.

“Now, here’s your blazer.”

Lisa lifted the jacket from his arm as if it were a dirty tissue.

“Even if I wear this nasty blazer for today,” she said, “I’m still going to have to go out and buy a new one for tomorrow.

“These jackets aren’t cheap.

“What if I was just to wear a company shirt like the rest of the guys?”

“No way,” Ed said. “You know the dress code.”

“Believe me,” he went on, “this isn’t how I’d choose to spend my money, either.”

“At least the men’s shirts have the company logo on them,” Lisa said.

“That’s has to help the guys around here get better sales – and better commissions!”

## Not very flattering

“Don’t you see?” Ed asked. “The point of the dress code policy is to help us all look more professional and help sales.

“It’s not so bad,” he added.

“Not for you,” Lisa said. “You don’t have to stand around in a not very flattering polyester blazer.”

Ed was losing patience. Lisa was

pushing this too far, and everyone in the company was watching to see what Ed would do next.

## Discrimination?

“Either wear the blazer – or that’s it, you’re fired,” he told her.

“Well, I’m not wearing that thing,” Lisa said.

“Then this is goodbye.”

Soon after, Lisa sued.

She said she’d been discriminated against because she was a woman.

She took issue with the dress code policy and her boss’s comments.

The company said the policy was nondiscriminatory.

The goal was to present a professional image to the public.

The firm asked that the case be dismissed.

**Decision:** The company lost.

The court agreed the policy wasn’t discriminatory. It required men and women to wear different clothes,

but that was OK because neither gender was more burdened.

The problem? The court said the supervisor’s comment about women needing to cover up left the door open for a jury to possibly find the supervisor had exhibited biased intentions.

**Key:** Very often what you say can be far more problematic than what you’re trying to accomplish.

Case: *Rohaly v. Rainbow Playground Depot.*

### What you need to know:

When employees push back against a company policy:

- **Do explain why** the policy exists. When people know for sure there’s a reason for a rule – and that you’re not just trying to run their lives – they’re more likely to comply.
- **Don’t add your interpretation.** Considering that you probably didn’t write the rule, just being the messenger is enough.
- **Don’t give in to whining.** At least not without the full support and cooperation of your upper management team. Allowing one person or group to disregard a rule, while requiring another to follow the rule, is an invitation for a bias lawsuit.

## TEST YOUR KNOWLEDGE

### Know the pros and cons of hybrid work schedules?

It seems everybody is ready to work a little bit from work, but mostly from home.

And that is causing great concern among businesses. To test your knowledge of managing trends related to work from home, respond *True* or *False* to the following:

1. Work-from-home days for employees should be seen as a time for more quiet focus.
2. Employees embraced working from home mostly because it’s just a lot easier on them.
3. The fact of the matter is employees are more productive when in an office, which tends to be an environment that’s far more suited to collaborating with co-workers, building rapport, and creating dynamic relationships that ensure increased productivity and improved results.

## ANSWERS

1. *True.* The Harvard Business Review says it’s best to look at remote days as times for employees to catch up mentally on where the business is headed and what their role in it is. Still, managers should have clear times when employees are required to touch base during remote times.
2. *True.* People really enjoy cutting down on commutes and spending more time with family — so much so, that over 40% of employees said they would start looking for a new job or quit immediately if they were forced to return to work.
3. *False.* Experts say forced proximity does not automatically translate into happy, collaborating team members. Simply sitting in the same office is not enough to create productivity and harmony between colleagues. A successful remote culture takes a lot of work and intentionality. It won’t just happen.

### 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.*

### **Eye care group pays \$67K for disability bias claim**

**What happened:** Blue Sky Vision, LLC, hired an optometrist at its Grand Rapids, MI, facility. Three months after his hiring, the optometrist mentioned his medical condition to a co-worker. Blue Sky management learned of the employee's condition and, without evaluating whether the condition would affect his ability to perform his job, told him that he was a liability and sought his resignation.

When the employee protested, the company postponed his termination, placed him on leave and required him to submit to an overly broad and intrusive medical inquiry into health conditions unrelated to his ability to perform his job. When the employee refused to submit to it, Blue Sky sent him an official termination letter, according to the EEOC complaint.

**Decision:** Along with agreeing to pay the employee \$67,590, Blue Sky will also provide ADA training for managers.

**Cite:** EEOC v. Blue Sky Vision, LLC.

### **Firm fired worker with mental health problems**

**What happened:** Staffing companies TrueBlue, Inc. and PeopleReady, Inc., fired an employee because of her psychiatric disability.

The employee, who worked at the Manassas, VA, office of TrueBlue's subsidiary, PeopleReady, was not permitted to return to work after being medically cleared to do so

following a hospitalization for her disability.

The EEOC lawsuit further alleged that the companies terminated the employee because she required future intermittent leave for outpatient medical appointments.

**Decision:** Along with paying the former employee \$125,000, the settlement requires that the companies implement an ADA reasonable accommodation policy and provide training on ADA compliance.

**Cite:** EEOC v. TrueBlue, Inc. and PeopleReady, Inc.

### **NJ hospitals out \$77K for discriminatory practices**

**What happened:** Saint Clare's Health, of Morris County, NJ, hired a pregnant candidate for a per diem EMS dispatcher position at its Dover, NJ, facility.

A few days before her start date, the employee was hospitalized and diagnosed with preeclampsia, a pregnancy-related impairment affecting the circulatory system. The employee then contacted Saint Clare's human resources department about her diagnosis and asked what steps she needed to take next.

Saint Clare's Health responded by withdrawing her job offer.

**Decision:** St. Clare's agreed to pay \$77,550 in back pay and wages to the fired job candidate and agreed to implement a plan to bring its ADA policies and compliance standards up to accepted federal levels.

**Cite:** EEOC v. Saint Clare's Health.

## STOP, LOOK, LISTEN ...

### **Being productive, staying productive: What's it take?**

Why are some people more productive than others? And is it possible to get the slackers to kick it up a notch or two?

Business researchers recently looked at those kinds of questions and found there are habits, patterns and movements common to most productive people.

Here are three.

#### **Revise daily schedule**

The most productive people do more than plan their day. They revise daily schedules the night before.

Even more important, they plan work based on their top priorities and then act throughout the day with a definitive goal. (Older and more senior workers are particularly good at this, researchers pointed out.)

**Tip:** Next to each activity or appointment on the daily plan, note an objective so no time is squandered.

#### **Prepare for the overload**

Productive employees – regardless of if they're remote or on-site – don't complain about and procrastinate around a high volume of work and information.

They manage time and tasks when others might be overwhelmed by the quantity that's in front of them.

**Tip:** Use daily, usual routines – as small as getting dressed or eating breakfast – so you spend less time thinking about them and have more time and decision-making power to focus on the quantity of work.

#### **Limit meetings**

The most productive people waste little time in meetings.

**Tip:** Prepare or insist on an agenda. If it's your meeting, send a detailed agenda to all attendees that includes the goals to accomplish ahead of time. If you're asked to attend, ask how you're expected to contribute and what the agenda is to determine if it's a worthwhile use of your time.

## SUPERVISORS SCENARIO

# She was told she was the ‘obvious choice’; so why was the promotion given to a man?

## Hiring decision results in gender bias lawsuit

Debra Polansky walked into manager Jon Butler’s office and handed in her letter of resignation.

“What do you mean you’re resigning? What’s going on?” Jon asked.

“I’m quitting. I’m done with this place. You told me I was the obvious choice and the most qualified for the open regional manager position.

“Then you turned around and gave the job to Kevin, who has less experience,” Debra said.

“At the time, I thought you were the most qualified,” Jon said. “But it turns out Kevin did have managerial experience and the expertise we needed, so we offered it to him instead.”

“Yeah, right! I think it has a lot more to do with the fact that I’m a woman,” Debra said.

“That’s not true,” Jon replied.

“You said it yourself, and I quote, ‘Women aren’t typically in that type of position, but we’ll see what happens when we throw your name out to corporate.’”

Debra said.

“Oh, come on Debra, I didn’t mean it in that way. Plenty of women hold key positions in the company,” Jon said.

### Was it experience?

When her boss refused to reconsider his decision, Debra quit and sued the company for gender discrimination.

The company tried to get the case dismissed. It said the person selected had more years of managerial experience and knowledge of the industry.

**Decision:** The firm lost when a judge sent the case to trial, which often results in a hefty out-of-court settlement.

Since she was told she was the “obvious choice” for the position, but later told that the company typically didn’t hire women for that particular slot, the judge said there was enough discrepancy that a jury should decide whether gender bias actually played a role in denying her the promotion, or not.

*Case: Wilson v. B/E Aerospace, Inc.*

### What you need to know:

Sex discrimination – or gender bias – involves treating a job applicant or employee unfavorably because of sex, sexual orientation, gender identity, or even pregnancy.

The law forbids discrimination when it comes to any aspect of employment, including:

- firing,
- pay,
- assignments,
- promotions,
- training,
- benefits, and
- any other term or condition of employment.

## Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes. The company won when a court dismissed Sam’s disability discrimination lawsuit.

Sam’s attorney argued that Sam’s anxiety was a qualifying disability under the ADA and that he’d requested to make up for any time he missed by staying late at work – and the company illegally failed to accommodate his disability when it fired him.

The company didn’t dispute Sam’s disability. But it claimed the accommodation request was unreasonable. Being on time was an essential part of Sam’s job. After all, punctuality was in his job description, the company said.

The court sided with the company and ruled Sam’s accommodation request was unreasonable because it interfered with the

essential functions of his job – being present and on time, which the company made clear via its job description, attendance policy and repeated warnings.

### Get it in writing

More employers are trying to be flexible with work hours. But some positions just don’t lend themselves to that type of flexibility.

If being present in the office during certain business hours is essential for a job, make that clear to the employee from the get-go and document it in the formal job description. That saved this employer.

*Cite: Williams v. AT&T Mobility Services LLC*

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