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July 1, 2022

OUR TOP STORY

They both argued, but only one got fired: Now what?

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INSIDE

Promoting respect in the workplace

Coffee chain loses bias lawsuit

Bad bosses vs. great managers

Complaint just didn't seem likely

Workplace romance turns sour: Did supervisor do the right thing?

Co-workers' interactions violated company policy

This nonsense about the breakup between you and Lisa has to stop," Melanie warned. "I have to supervise the both of you, and I can't have you two bickering all the time."

"But it's her fault," Eric protested. "I tried to tell her we could still be friends and co-workers, but she ..."

"Yes, and when I talked to her about it, she said it was your fault, that you're the one who won't let it go," Melanie said.

"I'm not going to play referee," she added. "We have a job to do here, and your arguing all the time is hurting productivity

and making other people uncomfortable, so let's just stop it."

Eric nodded as he spoke: "I can promise you that I will if she will."

Applies to both

"You both will," Melanie said. "Realize that some of the stuff you say to each other borders on violating company policy about intimidating and threatening co-workers. It can be grounds for termination."

"I know," he said. "But I'd like to clear something up. You're saying this is a two-

Please see Turns sour ... on Page 2

Sharpen Your Judgment

Did the rumor mill make the workplace hostile?

HR manager Lynn Rondo was at her desk looking at candidates for the latest promotion when company attorney Eric Bressler walked in.

"Sorry to barge in like this," he said. "But we've got a problem. Annie Hawkins is suing us for a hostile work environment."

"What?" Lynn asked. "Please don't tell me this is all about that rumor going around."

"Unfortunately, it is," Eric said.

Just the rumor mill?

"It's just gossip!" Lynn said in frustration.

"Annie was promoted pretty quickly, so some employees started a rumor that she was sleeping with her boss. But everybody knew there wasn't

a bit of truth to it."

"Annie's saying she lost out on this latest promotion because of the rumor," Eric said.

"Well," Lynn sighed. "I spoke with her manager, and we decided to take her out of the running. It would only add fuel to the flames. But she wasn't the most qualified candidate, either."

"Promotion aside, Annie claims she was treated terribly by her co-workers because of the rumor," Eric continued. "She had to leave a meeting where her private life was being discussed."

"It's a bad situation," Lynn agreed. "But it's hard to control every little thing people are saying."

The company fought to get Annie's suit 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.

Turns sour ...

(continued from Page 1)

way street, that the warning isn't just for me because I'm a man?"

"That's absolutely correct," she affirmed. "I've had the same conversation with Lisa and told her the same thing.

"Consider this an official warning that you're both on probation. Any more of this nonsense, and someone will be gone over it."

"I get it, I get it," he said. "I just want to make sure I'm getting treated fairly."

"You can be sure of it," Melanie told him.

Later ...

Two weeks later, Melanie and Eric sat in her office as she held up two sheets of paper.

"These are statements signed by two employees who say you threatened Lisa by saying you were going to

'get' her for breaking up with you."

"They're crazy," he protested. "I'm the one who broke up with her. And she's the one who started that last argument."

"That's not what these statements say," she noted. "Both of them say you approached her first. And I could hear the two of you shouting at each other."

"So because two people say I'm at fault, that means I'm guilty?" he asked.

"It means there's evidence that you initiated the argument and then made a threat," she said. "You were warned about it, and now I have to fire you because of it."

"We'll see what my lawyer has to say about that," he said as he walked out the door.

Equal give-and-take

Eric sued the company for wrongful termination, based on the charge that he was the one who got fired even though there was equal give-and-take in the dispute with Lisa.

The company countered that there were witnesses to Eric's violation of company policy regarding threats.

It was that violation – after a warning – that led to the firing.

Decision: The company won.

A judge said statements from witnesses about what was said and who initiated the argument were enough evidence to support the

decision, especially after a warning had been issued.

Key: The supervisor in this case didn't take sides or attempt to decide who was right and who was wrong.

Instead, she issued equal warnings to both employees about the policy and disciplined the one whose violation had been verified by other employees.

Case: *Motto v. Wal-Mart Stores East, LP.*

What you need to know:

When faced with a dispute – romantic or otherwise – between two employees:

- Make resolution of the dispute a business matter, not a personal one; that is, tie the problem to how it affects productivity, teamwork or other workplace issues.
- Issue warnings to both parties, explaining how their behavior has been unacceptable and how further incidents will be dealt with, and
- Using documented evidence, decide who's violating policies and harming business, not who's right or wrong about the details of the dispute, and impose appropriate discipline.

TEST YOUR KNOWLEDGE

Promoting a respectful workplace takes practice

Supervisors and managers tend to dwell on what NOT TO DO when it comes to dealing with employees.

But it's also helpful to know what TO DO – to practice the words and actions that promote respect and fairness and contribute to a healthier and more productive workplace.

To test your knowledge of creating a sense of respect and fairness at work respond *True* or *False* to the following:

1. Incivility, abusive conduct and unlawful harassment are all behaviors that can derail respect.
2. Knowing how to respond to a worker's request for confidentiality is essential to handling complaints effectively.
3. You may not know what unlawful conduct is technically, but that's OK because you'll probably know it when you see it.

ANSWERS

1. *True.* The origin of the word "respect" also means "to look back." So respect is an observation your employees make, based on how you, the supervisor, handle situations. When you make clear that you won't tolerate incivility, abuse or harassment, your staff is more likely to value those qualities as well.
2. *True.* It's natural to want to respect an employee's request for confidentiality. But it's not a position you want to put yourself in. If an employee makes a claim about illegal behavior to you, you are required by law to report that complaint to the proper people in your organization.
3. *False.* Spotting unlawful conduct should not be a guessing game. Your HR team, and the EEOC, offer clear and easy-to-understand examples and information on what constitutes unlawful workplace behavior.

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.

Drive-thru coffee chain loses disability lawsuit

What happened: 151 Coffee, a North Richland Hills, TX, coffee chain, closed all its locations in April 2020 as a result of the COVID-19 pandemic.

The company sent an email to all employees at the end of April announcing reopening of stores in May and asking employees to confirm whether they would like to return. Two employees with disabilities responded that they were ready to return to work but requested reasonable accommodations because their disabilities placed them at higher risk of serious illness from COVID-19.

151 Coffee denied both employees' requests for reasonable accommodation, and instead told the two employees they could not return to work until a vaccine for COVID-19 had been developed.

Decision: In addition to paying \$70,000 to the two employees, 151 Coffee must disseminate a policy on disability discrimination that details the rights of applicants and employees under the ADA. It must also describe the procedure employees should follow if they require reasonable accommodation of a disability, and the steps managers must take if they receive a request for reasonable accommodation.

Cite: EEOC v. 151 Coffee.

Sandwich shop pays \$30K for firing autistic worker

What happened: Subway 701, in Buckeye, AZ, hired a young

man in 2019 after his mother explained to the restaurant that he needed accommodations because of his autism and ADHD.

The EEOC said that Subway 701 knew the applicant would need specific instructions for tasks, and follow up to make sure he understood the task. But, the EEOC said, Subway 701 did not provide those accommodations and fired him after only four shifts because of his disability and/or his need for accommodation.

Decision: Along with paying \$30,000, the store must conduct training on disability discrimination; provide reports to the EEOC; and post an anti-discrimination notice.

Cite: EEOC v. Subway 701.

EEOC sues online tutoring biz for age discrimination

What happened: iTutorGroup, Inc., hired thousands of tutors based in the United States to provide online tutoring from their homes.

According to the EEOC's lawsuit, in 2020, iTutorGroup programmed their tutor application software to automatically reject female applicants age 55 or older and male applicants age 60 or older.

Decision: The case has yet to be adjudicated. The EEOC filed suit in the Eastern District of New York after failing to reach a pretrial settlement through the EEOC's conciliation process.

Cite: EEOC v. iTutorGroup, Inc.

STOP, LOOK, LISTEN ...

5 things bad bosses do that great managers don't

How many managers do you know who are really great at their jobs? Go ahead and count yourself as one of them. Is your list long or short?

Here are five traits that set bad managers apart.

Bark out orders

Managers who do this won't have people to order around for long because no one likes being treated like a peon and will leave for greener pastures.

Deliberately humiliate

Along the same line, scolding employees in front of other employees is bad for morale and creates turnover.

No one likes to be publicly humiliated if they make a mistake. Pull the person aside and privately discuss the issue.

Use threats

I'm not talking about threatening to kill them, but rather threatening them with their jobs. It's not professional, and it makes you appear weak instead of strong.

Throw temper fits

You'd think that by the time people achieve management status they'd be all grown up. But that's not always the case.

While some people may appear to have reached adulthood, in reality, they're just spoiled brats who throw fits when they don't get their way.

That's not cool in a professional environment, and it won't garner respect or loyalty from staff.

Won't get their hands dirty

The best managers lead by example, not by command. They never ask their staff to do things they aren't willing to do themselves.

Managers who behave like certain tasks are beneath them will never have a staff willing to go the distance for them.

SUPERVISORS SCENARIO

Harassment complaint seemed quite unlikely to Supervisor: Do you investigate anyway?

A 'he said-she said' with no witnesses gives boss pause

“First he said to me, ‘Were you a bad girl last night?’” Judy Fowler said.

“And then he said, ‘Will you be a bad girl with me, too?’ And then he reached around me and touched my butt.”

“Zack did that?” Supervisor Carol Simpson asked incredulously.

“You know this isn’t the first time this has happened,” Judy said. “Why don’t you ever believe me?”

“You say he did these things right at your desk, which is smack in the middle of everything,” Carol noted.

“Why would he do something like that right in front of everyone?”

“I have no idea,” Judy said.

“And you walk around here chatting with him like nothing ever happened,” Carol added. “You’re always just as polite and pleasant with him as could be.”

“What do you want me to do? Snarl and curse? I’m a professional,” Judy said.

“If anyone would’ve come forward and said something to me, I might feel differently,” Carol said.

“But you say you’ve had at least three unwelcome encounters with Zack, and not a single witness to any of them,” she added. “Just try to ignore him, OK?”

Was incident ‘severe’?

But Judy didn’t ignore anything. She hired an attorney and sued the firm for failing to halt sexual harassment.

The company argued the supervisor had no reason to believe the incident was severe enough to act on, especially given that there were no witnesses.

Decision: The company lost when the court sent the case to trial.

The court said it found clear evidence from which a jury could find that the supervisor ignored or condoned the harassment, by telling Judy that she should ignore the unwelcome behavior.

Key: It’s never a good idea to make a judgment on whether harassment is severe enough to investigate. That’s not your call. Employers must investigate harassment.

Case: Hernandez v. Industrial Medicine Associates.

What you need to know:

Employers are encouraged to take appropriate steps to prevent and correct unlawful harassment.

Some ways you can do that:

- Communicate to employees that unwelcome harassing conduct will not be tolerated.
- Establish an effective complaint or grievance process.
- Provide anti-harassment training to managers and employees, and take immediate and appropriate action when an employee complains.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

No. The company lost when a judge ruled the case could continue to trial.

The company argued the rumor didn’t constitute a hostile work environment on the basis of sex because it was a comment on Annie’s job performance, rather than her gender.

It also said Annie was taken out of the running for the promotion because she was not the best candidate, and not just because of the rumor.

But the court disagreed.

It said the implication that Annie had sex with a superior to obtain a promotion reinforced the “traditional negative stereotypes regarding the relationship between the advancement of women in the workplace and their sexual behavior.”

Because of these stereotypes, the court said, it’s possible Annie suffered this harassment because she was a woman.

Gossip can be harassment

Workplace rumors can be hurtful, but as this case shows, they can also spell legal trouble.

Gossip about an employee’s personal life can easily be construed as harassment, and if the rumor is pervasive enough, it may even constitute a hostile work environment.

It’s crucial to have policies in place so employees know what’s appropriate to discuss at work and what’s not.

Case: Parker v. Reema Consulting Services.

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