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Staff member's disability caused him to frequently blurt out the N-word.

Male boss liked to touch women; called one female worker 'whore'

After learning about man's behavior, employer reprimanded him

The scenario

A woman who'd just started working for an organization was appalled when her new male manager walked into her workspace and started touching various parts of her body.

He fondled the woman's hair, shoulders and arms. He also touched her face while twirling her hair. Then he grabbed her and started forcibly kissing her on the cheek.

The unwanted touching happened almost every day. Each time, the male manager reminded the woman that he had the authority to fire her.

The female crew member also found out that the male manager had touched other women. In fact, he once

referred to another staffer he'd harassed as a whore.

The woman complained about the unwanted touching, so the employer launched an investigation and slapped the male manager with a written reprimand. But the reprimand had no impact. The manager continued to enter the woman's work area and touch her without her consent.

Legal challenge

The woman sued for a gender-hostile workplace.

The ruling

The employer lost. The court said the female staffer demonstrated a hostile work environment, noting that the male manager engaged in a

pattern of hugging, kissing, fondling, massaging and touching. The judge also said the employer's reprimand was meaningless because the male manager continued to touch the woman inappropriately.

The skinny

Remember: Disciplinary actions taken against staffers who've engaged in untoward conduct must be effective. In this case, the male manager continued to harass the woman even after he'd been reprimanded, which meant the employer's remedial measures didn't work.

Cite: *Ruiz v. City of Lafayette*, U.S. District Court, M.D. Tennessee, No. 2:23-cv-00023, 2/22/24.

Jury awards \$366 million to Black woman who was disciplined after she alleged bias

African American staffer received counseling letter one month after her complaint

"Tamara claims she was blindsided when her manager suggested that she accept a demotion," said HR Director Carolyn McGill.

"I'm not sure how Tamara could've been blindsided," replied Supervisor Nathan Hawkins, "considering that there had been a significant drop-off in her performance for quite some time."

"Well, Tamara doesn't think her performance had been slipping," said Carolyn. "She

contends that she was being singled out because she's a Black woman. As you know, Tamara submitted a formal complaint of race bias after her manager suggested the demotion."

Lacked merit

"Yes, I'm aware of that," said Nathan. "However, we investigated Tamara's claim of race discrimination and found that it lacked merit."

"Tamara also contends that she was retaliated against for

alleging discrimination," said Carolyn. "In fact, she just sued us for retaliation."

"That's unfortunate," said Nathan. "How did we supposedly retaliate against Tamara?"

"Tamara points out that shortly after we concluded our investigation of her bias complaint," said Carolyn, "her manager issued a letter of counseling to her."

"That's correct," said Nathan. "Tamara was

continuing to underperform, so her manager thought it was best to write up the letter of counseling."

Retaliatory letter

"Tamara sees the whole thing differently," said Carolyn. "She argues that the counseling letter was issued in retaliation for her complaint of bias, noting that she received the counseling letter less than one month after she alleged

(Please see \$366 million ... on p. 2)

\$366 million ...

(Continued from p. 1)

unlawful discrimination.”

“The counseling letter was issued to Tamara because her performance wasn’t getting any better,” said Nathan. “Keep in mind that Tamara filed a total of three internal complaints of race bias. All three claims were submitted right after her manager tried to discipline her for poor performance. But we determined that all three claims were unfounded.”

Unfortunate pattern

“Yes, things had fallen into an unfortunate pattern,” said Carolyn.

“Eventually, we put Tamara on a performance improvement plan, then terminated her,” said Nathan. “I’m not exactly sure how that constitutes unlawful retaliation.”

“Tamara insists that

several white coworkers who’d also underperformed weren’t placed on improvement plans,” said Carolyn. “She also alleges that the only other staff member who submitted a complaint of race bias was also let go.”

Challenge it

“Tamara wasn’t retaliated against for alleging race bias,” said Nathan. “We should challenge this lawsuit.”

Result: The company lost. After a court refused to dismiss the case, a jury found the employer liable for retaliation, then awarded \$366 million to the woman.

An appeals court upheld the jury’s decision, pointing out that the Black woman was issued a letter of counseling less than one month after she alleged race

discrimination. The close timing between the two events was potential evidence of retaliation, decided the judge.

The court determined that the Black woman provided evidence that white coworkers who’d also underperformed weren’t disciplined, issued a counseling letter, or fired.

Also terminated

And the judge noted that the only other staff member who filed a race discrimination complaint was also terminated.

Note: The appeals court reduced the amount of the jury’s award to \$248,619, concluding that state law forbade a \$366 million damages judgment.

Cite: *Harris v. FedEx*, U.S. Court of Appeals 5, No. 23-20035, 2/1/24.

What it means to you

It pays to remember that employees blindsided by allegations of poor performance are more likely to file costly discrimination lawsuits than are individuals who’ve been made aware of performance issues.

In this case, the Black woman was caught off guard when her boss suggested that she accept a demotion. As a result, the woman immediately filed a complaint of race discrimination, then resisted her manager’s efforts to discipline her for nonperformance, partly because she wasn’t even aware of the alleged problem.

Your takeaway: Try to provide regular feedback to your crew members, especially those who are struggling. Don’t wait for an annual review to alert someone to performance concerns. A timely heads-up will reduce the chances that a staffer will be blindsided by a disciplinary action.

You make the call

Muslim woman told to take off her hijab in front of man

“If you have a few minutes,” said HR Manager Alan Frankel, “I’d like to talk about a lawsuit that was just filed against us.”

“Lawsuit?” asked Supervisor Margie Brunton. “Who’s suing us?”

“Nadia,” said Alan.

“Nadia is suing us?”

asked Margie. “But Nadia still works here.”

“Although it’s somewhat unusual,” said Alan, “workers can sue their current employers.”

“I would think it’s highly unusual,” said Margie. “Plus, I don’t understand how Nadia can sue us for religious

discrimination when she didn’t suffer an adverse employment action.”

“Nadia contends that she experienced an adverse action when her male manager ordered her to remove her hijab in front of him so that he could confirm that her hijab wasn’t a safety hazard,” said Alan.

Not available

“I know Nadia had asked her male boss to let a female supervisor examine the hijab,” said Margie, “but he refused because there were no female managers available at the time.”

“Nadia contends that

she only agreed to remove the hijab in front of her male boss because he told her she’d have to go home for the day if she didn’t let him inspect the hijab,” said Margie.

“And because it’s against her religious beliefs to let a man see her without a hijab, she now suffers from severe anxiety.”

“Look, the hijab could’ve gotten caught in moving machine parts,” said Margie. “It wasn’t unreasonable for Nadia’s male manager to ask to inspect her hijab.”

“That’s a valid point,” said Alan. “We’ll fight this lawsuit.”

Did the company win?

■ *Make your call, then please turn to page 4 for the court’s ruling.*

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legal news for supervisors

Report reveals huge jump in bias claims

When it comes to rooting out discrimination, now is not the time to let down your guard!

That's your takeaway from a newly released report from the Equal Employment Opportunity Commission (EEOC). The agency's 2023 annual performance report reveals that considerably more U.S. workers are lodging discrimination allegations against their employers.

According to the report, 81,055 claims of unlawful bias were submitted by employees to the EEOC in 2023, a 10.3% increase from the 73,485 charges filed in 2022 and a nearly 33% hike from the 61,331 submissions registered in 2021.

The EEOC also said that it handled 522,132 worker phone calls in 2023, a boost

of nearly 10% from the number of calls it received in 2022. There were also 86,008 emails sent to the agency in 2023, a surge of more than 25% from 2022.

The huge increase in the number of complaints also contributed to a rise in awards for workers who alleged unlawful behavior. In 2023, for instance, the EEOC obtained more than \$665 million in restitution for victims of illegal bias, a 29.5% hike from 2022.

The EEOC also procured more than \$22.6 million for individuals through bias litigation, with the agency achieving results favorable to workers in 91% of its discrimination lawsuits.

Older crew member forced into retirement

Try to avoid the temptation to initiate a

conversation with an older employee about his or her retirement plans.

Otherwise, you could face a fate similar to that of J&M Industries, Ponchatoula, LA, which just agreed to pay \$105,000 to a former worker in order to resolve an EEOC age-discrimination lawsuit.

The trouble started when Ruth Sweeney, an employee who'd been with J&M for nearly 20 years, reached the age of 65. Right away, her supervisor started asking her questions such as "When are you going to retire?" and "What is the reason you aren't retiring?"

Even though Sweeney said she had no plans to retire, she was fired and replaced by a 39-year-old man. Sweeney reached out to the EEOC, which sued.

Based on EEOC v. J&M Industries, Inc.

New legal rulings

Boss questioned the need for family leave

When responding to a staffer's request for leave time, choose your words carefully. Any questions about the need for the leave could later be categorized as interference.

What happened: A worker asked his manager to let him take time off under the Family and Medical Leave Act (FMLA). The manager suggested that the crew member rearrange his schedule rather than take FMLA leave. The worker was approved for FMLA leave, but he was fired after he got back.

Legal challenge: The staffer sued for FMLA interference.

Company's response: We let him take the time off.

Ruling: The employer lost. The court said the manager initially discouraged the employee from taking FMLA leave.

Cite: *Kirkendall v. Boone County Board of Education*, U.S. District Court, E.D. Kentucky, No. 22-26-CLB-CJS, 3/6/24.

Japanese language used in all meetings

Employers that allow meetings to be held in a language that not everyone speaks are risking a lawsuit.

What happened: A white man thought his Japanese bosses treated him poorly because of his national origin. For instance, only Japanese was spoken during meetings and he was told to act "like a Japanese worker." The man was later fired.

Legal challenge: The staffer sued for national origin bias.

Company's response: He was a poor performer.

Ruling: The company lost. The use of only Japanese during meetings and the suggestion that the white employee behave like a Japanese worker could've indicated bias.

Cite: *Kurtanidze v. Mizuho Bank*, U.S. District Court, S.D. New York, No. 23 Civ. 8716, 3/13/24.



focus: disability accommodations

Dilemma: A worker says he's disabled but doesn't request an accommodation

You were surprised when Robert, one of your top performers, told you that he suffers from depression.

Because you recognize that depression could be considered a disability under the Americans with Disabilities Act (ADA), you know you might have to accommodate his condition. However, Robert didn't ask for an accommodation.

So what's your next step?

For starters, you can't ignore the situation. You have to consider potential job accommodations for Robert. Don't wait for him to request a specific type of accommodation – you have to initiate the conversation because you're now aware

that Robert has a health condition that could be protected under the ADA.

Document everything

Remember to document your efforts to accommodate Robert's disability – from the start of the interactive process until a reasonable accommodation has been implemented. That way, you can prove that you engaged in the interactive process and potentially show why some accommodations might not have worked. Plus, documentation could help you prove that a proposed accommodation would've created an undue hardship for the organization.

Ask Robert whether he has any suggestions for

possible accommodations. While you aren't obligated to provide Robert with everything he requests, he's likely to have some pretty good proposals.

If you're unsure whether an accommodation will be effective, consider instituting the accommodation for a predetermined trial period without committing to its full-time implementation.

What's next: After the accommodation has been provided for a reasonable length of time, follow up with Robert to make sure the accommodation is meeting his needs. Be sure to evaluate potential adjustments that might make the accommodation even more effective.



legal developments

Did hiring manager assume female staffer couldn't handle job because she had kids?

Supervisor's take-home: It's never a good idea for a hiring manager to make assumptions about a job candidate's willingness to work long hours due to his or her family circumstances.

What happened: A hiring manager interviewing a female staff member seeking a promotion asked her to say something personal about herself. The woman said she had two children and that she and her husband were trying to have a third child. The manager asked whether the woman would be able to work the long hours, even in the middle of the night, with small children. The woman said it wouldn't be a problem.

What people did: A male

staff member applying for the same position was also asked by the hiring manager to talk about his personal life. He said he had four children and that he had a lot of duties related to his kids. However, the hiring manager didn't ask whether the man could work the long hours, even in the middle of the night. The man was picked for the position.

Legal challenge: The woman sued for gender discrimination, saying she was passed over for the promotion because of gender stereotypes about the childcare responsibilities of men and women.

Result: The company lost. The court said the woman provided strong evidence that

she wasn't chosen for the job because the hiring manager assumed she wouldn't be able to handle both her work and childcare duties, pointing to the fact that the woman was asked whether, because she had children, she could work long hours, while the male job candidate who also had kids wasn't asked whether he could handle the long hours.

The skinny: Managers who assume that women with children will be less committed to their jobs are potentially exposing their employers to costly gender discrimination lawsuits.

Cite: *Maier v. United Parcel Service*, U.S. District Court, N.D. Illinois, No. 21-cv-03506, 2/29/24.

You make the call: The Decision

(See case on page 2)

No. The employer lost. The court refused to dismiss the religious discrimination lawsuit.

First, the judge ruled that the woman suffered an adverse employment action when her male manager told her to remove her hijab in his presence, even though doing so violated her sincerely held religious beliefs.

The refusal of the male manager to accommodate the woman's request that she take off the hijab in front a female supervisor only was a materially adverse change in the woman's terms and conditions of employment, said the court, and it was therefore more than a mere inconvenience for her.

The judge also ruled that the employer failed to prove that it would've been an undue hardship for the organization to accommodate the woman's beliefs.

What it means: You have to prove undue hardship

Be sure to carefully consider all requests for a religious accommodation made by members of your crew. And keep in mind that unless you can demonstrate that the accommodation would be unreasonable – which is extremely hard to do – you'll have to accede to the accommodation.

In this case, the employer was unable to prove that it would've been an undue hardship to wait until a female supervisor was available before insisting that the Muslim staff member remove her hijab in front of a male supervisor.

Based on Billings v. Murphy.



legal nightmare

Managers tried to accommodate disabled worker who kept blurting out the N-word

Overview

Supervisors encountered a quandary when they tried to accommodate a disabled man who had the unfortunate habit of blurting out the N-word.

The scenario

When Cameron Cooper accepted a position as a delivery driver for Coca-Cola, he told the hiring manager that he suffers from Tourette syndrome. However, he failed to mention that he also had a related condition called coprolalia, which causes him to utter obscene and inappropriate words.

But Cooper's managers soon became aware of his disability when an important customer complained that

Cooper had frequently and freely said the N-word while stocking merchandise inside the customer's store. The customer was upset because she had to apologize to people in the store, including an African American cashier.

Following the incident, Cooper took leave to adjust his medication and to obtain additional treatment. He returned to the workplace.

A short time later, however, a different customer reported that Cooper had repeatedly blurted out the N-word while delivering merchandise.

Cooper again took leave. This time, his doctor said he could return to work only alongside another driver. So Coca-Cola reassigned Cooper

to the position of driver helper. But that didn't solve the problem. The company continued to receive customer complaints about Cooper, so he was moved to a warehouse job with less pay. Cooper resigned.

Legal challenge

The worker sued for disability discrimination.

The ruling

The company won. The court said the disabled man was unable to perform the essential functions of his job – which included customer interaction – with or without a reasonable accommodation.

Based on Cooper v. Coca-Cola Consolidated, Inc.