

Legal Alert

FOR SUPERVISORS

Sample Issue



In This Issue

2 You Make The Call

Cold shoulder for solid performer after she announces pregnancy.

3 News

Most people are willing to work with those who have criminal records.

3 New Legal Rulings

Employee ordered to return to the job while still on military leave.

4 Legal Developments

Manager: "Muslims are taking over the world; they should be nuked."

4 Legal Nightmare

Staffer told by her boss that women should be barefoot and pregnant.

Male supervisor tells female staffer: 'All women are b-tch-s'

When worker complained, her manager reduced her hours

The scenario

It didn't take long for a woman who worked in a job dominated by men to find out that her male boss didn't like women very much.

The manager routinely referred to the woman as a "b-tch." He told her that "all women are b-tch-s."

Partly because she was the only woman in the department, the supervisor also began to spread rumors that she was having affairs with just about everyone.

The manager also forwarded to the woman a derogatory email about attending classes designed to increase the intelligence level of women.

One day, the supervisor

told the woman that her hair looked like "sh-t." He also said he'd hire another woman for the department to show her how to style her hair. He said she was denied promotions because of her hair.

When she confronted her boss about the inappropriate behavior, he reduced her work hours. She complained to her supervisor's male manager, who shrugged and pointed out that her boss simply didn't like women.

Despite multiple complaints by the female staffer about the discriminatory behavior, nothing was done to stop it. Eventually, the woman went on workers' comp after suffering a back injury. She was terminated while she was out on comp.

Legal challenge

The woman sued for a hostile work environment.

The employer said she was dismissed because she abused workers' comp.

The ruling

The employer lost. The court said a jury should decide whether the woman faced a hostile workplace.

The skinny

When workers complain of inappropriate behavior, they expect something to be done. If nothing happens, they're more likely to sue.

Cite: *White v. Chester Housing Authority*, U.S. District Court, E.D. Pennsylvania, No. 17-1790, 4/4/18.

New supervisor criticizes older woman, says she has a matriarchal style of management

After female worker sues for age bias, company claims her position was eliminated

"We didn't fire Kate because of her age," said Supervisor Nathan Hawkins. "Her position was eliminated as a cost-cutting move."

"Kate doesn't think we actually eliminated her position," said HR Director Carolyn McGill. "She says her duties were simply shifted to a younger man favored by management. She's suing us for age discrimination."

"That can't be right," said

Nathan. "Age had nothing to do with her dismissal. What evidence does Kate have to show age played a role in the decision to fire her?"

Meet the new boss

"According to Kate," said Carolyn, "she worked for us for more than 23 years, always received positive performance reviews and never missed a day of work."

"That's true," said Nathan. "She had a strong work ethic.

However, things started to change when she got a new boss, Doug. He thought she was set in her ways and wasn't motivated to expand her horizons, so to speak."

"Kate thinks Doug had it in for her," said Carolyn. "She believes he was determined to bring in his own people."

"It's not unusual for a new manager to promote staffers he's comfortable with," said Nathan.

"I agree," said Carolyn. "In

this case, however, Kate thinks there was more going on than meets the eye."

"In what way?" asked Nathan.

Several comments

"Kate claims that Doug made several comments that were discriminatory toward older workers," said Carolyn.

"What sorts of comments?" asked Nathan.

"Doug sometimes referred
(Please see *Matriarchal* ... on p. 2)

Matriarchal ...

(Continued from p. 1)

to Kate using phrases such as 'old guard,' a 'legacy style' of management and a 'laissez faire' attitude."

"I think Doug was talking about the fact that Kate had been with us for a long time rather than about her age," said Nathan.

"Did Doug say anything about a matriarchal style of management when talking about Kate?" inquired Carolyn.

Singled out

"I believe he did make a statement to that effect," said Nathan. "Again, though, such a comment hardly proves age bias."

"Kate also says Doug began singling her out in a bad way," said Carolyn. "Apparently, at the start of meetings, he routinely said he'd take comments from everyone but Kate."

"I think he was making those statements in jest," said Nathan.

"Maybe," said Carolyn. "Kate also alleges that Doug took most of her duties away from her and gave them to the person he'd handpicked to take her job, who happened to be a younger man."

Overreacting

"Kate is overreacting," said Nathan. "Her position was eliminated. We should fight this lawsuit."

Result: The company lost. A jury said the employer was guilty of age discrimination and awarded the worker \$1.516 million in compensatory damages and \$7 million in punitive damages.

The jury's verdict was upheld by an appeals court, which ruled that the

woman provided adequate evidence that her dismissal was motivated by her age.

Potential bias

The court pointed to derogatory comments such as "old guard," "legacy style" and "laissez faire" attitude. The judge put particular emphasis on the manager's comment about a matriarchal style of management, which could've indicated bias against older women.

The court also noted that the woman was replaced by a younger man. And the claim that her position was eliminated was undercut by the fact that the younger male employee assumed most of her prior duties.

Cite: *Torres v. B/E Aerospace, Inc.*, Court of Appeals of California, No. B278517, 5/16/18.

What it means to you

A word to the wise: Few workers like to be singled out in meetings in a negative manner, and people subject to such treatment are more likely to file a lawsuit.

In this case, the new boss said he'd take comments at meetings from everyone except the older woman. Even though the statements might have been made in jest, they didn't sit well with the worker, and they were part of the reason she sued.

Also, be aware of comments that could be misconstrued as discriminatory. The new boss in this case described the woman using phrases such as "old guard," a "legacy attitude" and a "matriarchal style."

The judge said these phrases, taken together, probably demonstrated a bias against older female employees.

You make the call

No job openings for woman after she became pregnant

"How could we have discriminated against Claire?" asked Supervisor Margie Brunton. "She never formally applied for employment with us."

"Claire claims that she would've submitted a job application if she hadn't been lied to," said HR Manager Alan Frankel.

"That's a serious accusation," said Margie. "Why does Claire think she was deceived?"

"As you know," replied Alan, "Claire worked for us on a probationary basis with the idea that if she did well, she'd be hired full time."

"That's correct," said

Margie.

"According to Claire," said Alan, "she received positive performance reviews and thought she was a lock for a full-time job. However, she says everything changed after she became pregnant."

Someone hired

"That's an oversimplification of the situation," said Margie.

"Perhaps," said Alan. "Claire says that when she asked about a full-time job, she was told there were no positions available. However, she claims that we placed an advertisement for job candidates while she was

still here and hired someone into her former position right after Claire's probation ended."

"It was a coincidence," said Margie.

"Claire alleges that she overheard her manager state that it wouldn't be convenient for Claire to be pregnant," said Alan. "She also says she was told on her last day that she should apply for a full-time position once she had her baby. She's suing us for pregnancy bias."

"But Claire never submitted an application for a full-time position," said Margie. "We should 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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I O B P
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legal news for supervisors

Criminal background not usually a problem

If you're thinking about hiring a worker with a criminal record, you might want to first consider the results of a recent survey.

The study by the Charles Koch Institute, Arlington, VA, revealed that most managers and employees are willing to work with folks with criminal records.

Among the 540 managers who responded to the survey, 55% said they're willing to work with someone with a criminal record, 29% said they're neither willing nor unwilling to do so, and 15% said they're unwilling to work with people who have a criminal record.

Among the 512 nonmanagers included in the study, 51% said they're willing to work with people

with criminal records, 36% are neither willing nor unwilling to do so, and 15% said they're unwilling to work with individuals who have a criminal history.

Managers who hired workers with criminal records generally reported high satisfaction with the hire. Fully 82% of the respondents said the quality of the hire was at least as high as the quality of a hire when individuals didn't have criminal backgrounds.

Hiring manager asks about applicant's cane

One manager just learned the cost of raising concerns about the ability of a disabled job applicant to perform the work: \$45,000.

That's how much The Hertz Corp., Estero, FL, has agreed to pay in order to settle an ADA lawsuit

brought by the EEOC.

Here's what happened: After suffering a stroke, Dan Newton began to use a cane to help with walking.

During an interview for an open position at a Hertz facility in Englewood, CO, the hiring manager asked Newton about the cane and whether it would limit his ability to do the job.

Newton, who had extensive experience in the field, said the cane wouldn't affect his job performance. Nevertheless, Newton was passed over for the position, which went to a woman with no relevant work experience.

When Newton contacted the EEOC, the agency pointed to the manager's question about the cane as proof of potential bias.

Based on EEOC v. The Hertz Corp.

New legal rulings

Man on military leave told to return to work

Be careful about contacting workers while they're on leave.

What happened: A member of the U.S. Army Reserve took leave for military duty three times over two months. Nine days before the end of his third leave, a manager called him and demanded that he return to work. The staffer was unable to do so, but he did come back to the job as originally scheduled. Five days later, he was terminated.

Legal challenge: The worker sued under the Uniformed Services Employment and Reemployment Rights Act.

Company's response: He was fired for poor performance.

Ruling: The employer won. The court said the man was allowed to return to work for five days before he was fired.

Cite: *Jbari v. District of Columbia*, U.S. District Court, DC, No. 16-cv-2247, 3/31/18.

Female staffer caught sleeping on the job

If a disabled worker wants an accommodation, he or she has to let you know about his or her condition unless the disability is obvious.

What happened: A woman who had a history of falling asleep on the job was found by her supervisor under her desk sound asleep. She said she was suffering an anxiety attack. The worker had never requested an accommodation for a disability. She was fired.

Legal challenge: The worker sued under the ADA.

Company's response: She couldn't perform the essential job function of staying awake.

Ruling: The company won. The court said the woman failed to timely notify the employer of her alleged disability.

Cite: *Kaye v. BNSF Railway*, U.S. District Court, N.D. Texas, No. 4:17-cv-656-A, 5/31/18.



focus: cognitive disabilities

What to do if a disabled crew member is the subject of harassment, bullying

You've recently become aware that a crew member who has a cognitive disability has been the brunt of distasteful jokes and bullying by coworkers. Should you try to stop it?

The short answer is yes. If you fail to address the bullying, you risk an ADA lawsuit. Keep in mind, however, that workers with cognitive disabilities aren't legally protected from simple teasing or offhanded comments; it's only when the behavior is severe enough to create a hostile work environment that it becomes a problem.

Workers with cognitive disabilities include those who have development impairments such as mental

retardation and cerebral palsy, those with traumatic brain injuries, and those with learning disabilities such as dyslexia and autism.

Important: Many folks with developmental and cognitive disabilities don't have limited intellectual functions. In reality, they might have above-average intelligence but have difficulty receiving, processing, or expressing information.

It's hard for people to reach their potential if they face constant harassment.

Unwelcome behavior

To reduce the chances of unwelcome behavior toward disabled staffers, first learn more about the person's disability. By doing so,

you'll be better able to answer questions from other crew members about the condition.

Also, assign a buddy to help the person adjust to the work environment. The buddy should be an empathetic person who understands the nature of the disability and has good communication skills.

You can also reduce the chances of harassment by setting a good example for your crew. For instance, provide the disabled worker with instructions more than once and check – more frequently than you might with someone who doesn't have a cognitive disability – that the employee is able to perform the work.



legal developments

Manager: ‘Muslims are taking over the world, and they should just be nuked’

Supervisor’s take-home: When you provide consistent discipline of workers for similar infractions, you reduce the chances that your employer will be on the losing end of a bias lawsuit.

What happened: An African American man who practiced the Muslim religion worked for a white manager who didn’t like Muslims. The supervisor once remarked to the worker, “Muslims are taking over the world, and they should just be nuked and wiped out.”

What people did: The black man thought his white manager also didn’t like African Americans. For instance, the black staffer was written up for attendance

violations more than 50 times, even though some of his white coworkers also had attendance issues, but none of them was written up as frequently as the black man was. After the black worker filed a complaint with the EEOC, he was assigned to a different supervisor. Eventually, the employee was fired because he allegedly failed to conduct a required quality-control check.

Legal challenge: The worker sued for race bias.

The employer argued that the man was dismissed because of a quality mistake.

Result: The company lost. The court said a jury should decide whether the African American employee was fired

because of his race.

The judge pointed to the disparate treatment of the black man, noting that he was written up for attendance violations while white workers with similar attendance problems weren’t disciplined. The judge also pointed to the manager’s disparaging comments about Muslims as proof of potential discriminatory intent.

The skinny: Statements made by managers that show insensitivity toward other races and religions never look good in court.

Cite: *McIntosh v. Greater Cleveland Regional Transit Authority*, U.S. District Court, N.D. Ohio, No. 1:16-cv-1680, 3/22/18.

You make the call: The Decision

(See case on page 2)

No. The company lost. The court allowed the lawsuit to proceed to trial.

The judge said the company might have been guilty of pregnancy bias even though the woman never formally applied for a job.

According to the court, the woman was dissuaded from seeking a full-time position when she was told there were no opportunities available. The court noted that this statement was a lie, because the company was placing recruitment ads and, in fact, hired someone right after the woman’s probationary period ended.

The point: The act of discouraging someone from applying for a job is just as illegal as firing someone for pregnancy discrimination.

And the judge pointed to the comments that the pregnancy would be a problem for the employer as well as the statement made to the woman about applying for a job once she had her baby as potential proof of discriminatory intent.

What it means: Maintain records to support denials

Keep in mind that job seekers have as much right to sue for bias as employees do.

That’s why you should bulletproof your hiring process by maintaining records to prove the reasons you decided not to hire someone, especially if the person is a member of a so-called protected class. Your evidence could later prove valuable should a job applicant decide to sue.

Based on Abed v. Western Dental Services, Inc.



legal nightmare

Male staffer tells female coworker that women should be barefoot and pregnant

Overview

Faced with rampant sexual harassment in their workplace, several female employees complained to managers. But nothing was done to stop the unwelcome behavior, and at least one woman was fired.

The scenario

Alice Hancock, a correctional officer at the Arizona State Prison, Florence, AZ, was one of several female employees who faced sexual harassment.

Hancock was working with Sgt. Robert Kroen when he grabbed her crotch and pinched her vagina.

But Kroen wasn’t alone. Other male officers also

harassed female staffers.

While making humping gestures, one officer told a woman that he wanted to ram her from the back. Another man said to a female worker, “All I want to see is the top of your head bobbing up and down while you’re on your knees.” The same officer often said that women should be barefoot and pregnant.

Hancock got tired of the boorish behavior and complained. But that didn’t help much. Managers placed her on unpaid leave, suspended her for 15 days and eventually fired her.

Another female officer, Sofia Hines, reported that a male employee spanked her butt in front of inmates. The

man often used inappropriate language when talking to Hines. He’d say things such as “I have my own nuts” while making obscene gestures and using foul language.

Hines and Hancock contacted the EEOC.

Legal challenge

The EEOC sued The GEO Group, the operator of the facility, for sexual harassment and retaliation.

The ruling

The employer lost. After a court refused to dismiss the lawsuit, The GEO Group was forced to settle the case by paying \$550,000.

Based on EEOC v. The GEO Group.