

Claremont Management Group Presents Employer Update April 22, 2015

By

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I. Violence and Bullying in the Workplace

Virginia Tech, Columbine and Sandy Hook were incidents of mass murder. What is sometimes overlooked is that every location was also a workplace. Some of those killed were employees.

Very important to screen new employees carefully. Most employees with violence problems were like that when you hired them.

Most acts of violence are tied to psychological problems, family disputes and interpersonal disputes. Therefore, it is critical that supervisors observe their employees continually. Watch out for:

- Employee is going through separation, divorce, child custody or support, or similar situation.
- Employee has had an argument or appears to be agitated with managers or other employees.
- Employee has been in a disagreement with a client representative. (Watch out for the representative returning with violent intent, as well.)
- Employee's appearance changes. They stop dressing neatly. They look like they are not feeling good or getting adequate sleep.

Employee Assistance Programs, "EAPs," can provide economical and quick help to employees before a violent outburst occurs.

An Incident with a Violent Employee, Vendor or Client:

- Heroism is highly discouraged. Call the police if weapons are involved, or if a violent incident is likely.
- Based on various expert opinions, avoid touching an employee or client who is upset.
- Strength in numbers. When no weapon is evident, several managers coming forward and confronting a violent employee or client sometimes has a calming effect.
- Telling someone to “calm down” is the single best way to make someone more angry. Speak in a calm, even voice. Look at the person and acknowledge their humanity. If appropriate, you may want to mention the large number of witnesses or the presence of a video camera.
- If you have the opportunity, experience has shown that same sex and same ethnicity match-ups sometimes help to defuse the situation.
- When employees are being disciplined, it is recommended that two managers meet with the employee. This format also helps to avoid violence because literally, the employee is out-numbered.

Tie to bullying:

Bullying can be verbal or physical. It can lead to violence. In some of the cases of violence mentioned at the beginning of this section, the perpetrators indicated that they had been bullied and used that as a rationale to support their actions.

Serious enough that there is a Workplace Bullying Institute, WBI. It conducts an annual survey. The 2014 results:

20% have been bullied

7% presently bullied

21% witnessed bullying

The responses of employers from WBI includes:

26% Deny it is happening

16% Discount it

15% Rationalize it

11% Defend it

5% Encourage it

Vs.

12% Try to eliminate it

10% Acknowledge

6% Condemn it

What is Bullying at Work?

One accepted definition is:

All those repeated actions and practices that are directed toward one or more workers, which are unwanted by the victim, which may be done deliberately or unconsciously, but do cause humiliation, offense, and distress, and that may interfere with job performance, and/or cause an unpleasant work environment.*

*Einarsen, S. (1999). The nature and causes of bullying at work. *International Journal of Manpower*, 20, 16-27.

The Bullies:

Often the “boss”

More often men than women

Female bosses who bully tend to pick on females more than males

Seeking to control the situation

Gaining through intimidation

Lining up supporters to deny support to the bullied employee

Often, internally, insecure and use bullying to cover that insecurity

Some Symptoms & Comparisons:

Compared to Domestic Violence

Many bullied employees experience symptoms of distress away from work.

May result in more absenteeism and use of sick leave.

Has been indicated as a health issue

May drive off good employees

Consequences:

Loss of productivity

Some states will recognize bullying as a separate claim

Many employees will complain of employment discrimination which provides them ready access to agency support, when they are really being bullied.

Could lead to physical violence either by the bully or the bullied

Remediation:

If you are the boss, be conscious of such conduct of your own that could be perceived as bullying

Train supervisors and make sure they know:

- 1) Bullying will not be tolerated by them
- 2) They need to monitor the actions of their subordinates
- 3) Act to correct problems promptly

As noted above, consider an EAP program, if your company does not already have one

Promote a central point for any type of employment complaint, whether perceived as discrimination or not.

Promote a non-retaliation policy for persons who complain about or witness retaliation.

II. Banning Smokers from the Workplace

ACA and Smoking

- a. This has brought attention to the smoking issue.
- b. ACA allows insurers to raise smokers' insurance premiums up to 50 percent over those paid by non-smokers.

No federal law that protects smokers

Smokers have higher absenteeism, take additional breaks to smoke that reduces their amount of actual work time and increases health care costs. The health care issue becomes more severe as smokers age.

Complications:

More than half the states and DC have laws protecting smokers.*

Easier to restrict smoking in the workplace and using a "campus" approach, than to totally ban smoking during non-work hours.

Hiring – promoting the employer's non-smoking workplace may discourage smokers from applying to work at such employers.

HIPAA prohibits employer group health insurance plans from charging employees more for coverage because of a "health factor," which includes health status, medical condition and claims experience, among other things. There is some flexibility for employers to charge a higher premium if tied to a non-smoking program as part of a wellness program providing a reward for participation in the form of a reduced premium for not smoking.

Possible racial or national origin discrimination claims because poor and uneducated and some ethnic groups smoke at a much higher percentage.

Another possible discrimination claim under the ADA because smokers have higher claims experience with serious illnesses.

Every employer has to consider: It is possible that there are some great employees out there who are simply addicted to smoking and

does your business want to pass on the benefits due to the possible negatives?

III. EEOC Recent Actions

A. Transgender Cases

EEOC filed suit against two private employers for firing transgender employees as sex discrimination.

The private-sector lawsuits are part of its ongoing efforts to implement the Strategic Enforcement Plan it adopted in 2012, which lists as a top enforcement priority: “coverage of lesbian, gay, bisexual and transgender individuals under Title VII’s sex discrimination provisions, as they may apply.”

B. Telecommuting ruling not all it’s cracked up to be for employers

A Federal Court just ruled Ford Motor Co. was right to deny a disabled employee’s ADA accommodation request to telecommute.

Jane Harris worked for Ford as a resale steel buyer. She suffered from IBS. Tardiness, absenteeism and eventually lower performance ratings resulted

Wanted to work from home 4 days a week

Ford response:

- It said her job required her to have face-to-face contact with suppliers and plant officials therefore, in-person attendance was an essential function of her job.
- Her job required computer work that could not easily be completed remotely, and
- She had already been granted the ability to work from home up to two days per week and her performance under that arrangement had been substandard.

EEOC Sued on behalf of Harris

Ford won opening round with a summary judgment

On appeal by EEOC, a three-judge panel of the Sixth Circuit court reversed the decision and said her case should go to trial. It said: "... attendance at the workplace can no longer be assumed to mean attendance at the employer's physical location."

Then, the full panel of Sixth Circuit judges agreed to vacate the decision and rehear the case *en banc*. In an 8-5 decision, the panel sided with Ford and dismissed the EEOC's case on summary judgment.

Rationale: Ford acted reasonably in denying Harris' telecommuting request. While it acknowledged that there have been great advancements in technology, which could make telecommuting easier, those advancements did not prove that Harris' job could be performed at home.

The court also acknowledged that Harris' poor performance ratings under the two-day telecommuting arrangement helped support Ford's case that she couldn't perform her job remotely.

*"That general rule — that **regularly attending work on-site is essential to most jobs**, especially the interactive ones — aligns with the text of the ADA."*

So:

Job descriptions should include attendance at the workplace is an essential element of the job

Follow the job descriptions consistently and across the board

As always, evaluate every ADA accommodation request separately and in detail. No "knee-jerk" reactions are permitted.

Source: EEOC v. Ford Motor Co.

<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCoQFjAB&url=http%3A%2F%2Fwww.ca6.uscourts.gov%2Fopinions.pdf%2F15a0066p-06.pdf&ei=1mc1VZ3rEsbasASb74CIDg&usq=AFQjCNHCOCBEYiQm8MsArNoDxBysdxkqwx&bvm=bv.91071109,d.cWc&cad=rja>

IV. “Onboarding” – The New Word for Employee Orientation

15 questions to ask employees in their first 60 days

Make it a point to meet with new hires within the first 60 days. *Your goal:* Discover their likes/dislikes about the job and environment, see if the job meets their expectations and nip potential problems in the bud.

Then, ask some of the following questions, adapting them to your own needs:

1. Why do you think we selected you as an employee?
2. What do you like about the job and the organization?
3. What’s been going well? What are the highlights of your experiences so far? Why?
4. Do you have enough, too much or too little time to do your work?
5. How do you see your job relating to the organization’s mission?
6. What do you need to learn to improve? What can the organization do to help you become more successful in your job? (Don’t ask these two questions unless you are prepared to follow up with action. Otherwise, you can build false expectations, and that can cause disappointment.)
7. Tell me what you don’t understand about your job or our organization.
8. Compare the organization to what we explained it would be like.
9. Which co-workers have been helpful since you arrived? (Goal: Pinpoint which employees can be influential in retaining the new hire.)
10. Whom do you talk to when you have questions about work? Do you feel comfortable asking?
11. Does your supervisor clearly explain what the organization expects of you?
12. How does it go when your supervisor offers constructive criticism or corrects your work?
13. Do you believe your ideas are valued? Give examples.

14. How well do you get along with co-workers?

15. Have you had any uncomfortable situations or conflicts with supervisors, co-workers or customers?

Finish the discussion by asking the employee if he or she has any questions or suggestions on how the job can be managed better.

Source:

<http://www.businessmanagementdaily.com/clp/54997/thankyou.html>

V. FMLA Update

Workers in legal, same-sex marriages will now have the same rights as those in opposite-sex marriages to federal job-protected leave under the Family and Medical Leave Act, the Department of Labor announced.

The move updates the [FMLA definition of the term 'spouse'](#) so that an eligible employee in a legal same-sex marriage will be able to take FMLA leave for his or her spouse.

Application in states where same-sex marriage is not legal has been held up by a Federal Court ruling.