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Jilted male boss exacts revenge on woman who ended their romance

Employee fired one week after she complained of gender bias

The scenario

When she accepted a new job, a woman informed the employer that she'd been romantically involved with one of the male managers employed by the company.

However, she insisted that the relationship was over, that there'd be no further romantic involvement and that her job performance wouldn't be affected.

Despite these assurances, the male boss with whom she'd had the relationship started scheduling breakfast meetings in his home. He wore only a bathrobe during the sessions, and the woman was the only attendee. Eventually, the woman and the man resumed their sexual relationship.

After a while, the woman stopped going to the breakfast meetings. But the male boss didn't want things to end, so he began treating her differently. He provided less support and fewer resources for her projects. Her performance slipped.

The woman filed an internal complaint of gender bias. Following an investigation, the male manager was disciplined and ordered to not interact with the woman.

About one week later, the woman was fired for alleged performance shortcomings.

Legal challenge

The woman sued for retaliation, pointing out that she was terminated one week after she claimed gender bias.

The ruling

The company won. The court ruled that the woman wasn't retaliated against. The judge noted that the sexual relationship was consensual. Plus, the company investigated her claims and disciplined the male supervisor.

The skinny

Be aware that workplace romances can be ticking time bombs. If your employer has a policy on internal romances, enforce that policy. Otherwise, make sure crew members don't play favorites because they're involved in sexual relationships.

Cite: *Tirschwell v. TCW Group, Inc.*, Supreme Court of New York, No. 150777/2018, 6/11/20.

Deaf worker demands that her supervisor be transferred because he mumbles a lot

Company offered her multiple accommodations, but not the exact one she wanted

"Let's talk about Violet," said HR Director Carolyn McGill.

"Sure," said Supervisor Nathan Hawkins. "What's going on with Violet?"

"Violet is suing us for disability discrimination," said Carolyn. "She says that she was terminated because she's deaf."

"Violet was fired for numerous policy violations," said Nathan. "She was once written up for aggressive and intimidating behavior. Plus, she

was suspended twice for insubordination. Violet had major attitude problems."

Hunky-dory

"Violet claims that her attitude issues started after she was assigned to a new manager, Tim," said Carolyn. "Things were hunky-dory until Tim appeared on the scene. She alleges that Tim often mumbled, which made it hard for her to lip-read and to figure out what he was saying. She

also claims that Tim refused to communicate with her in writing, ignored her when she tried to talk to him, ridiculed her for talking with her hands and laughed about her efforts to communicate. Violet eventually complained to us."

"Yes," said Nathan, "and we immediately began to work with her to identify solutions."

"That's correct," said Carolyn. "As you know, Violet made two accommodation requests. She asked that Tim be

transferred and that all managers be trained in accommodating deaf people."

Not realistic

"It wasn't realistic for us to transfer Tim," said Nathan, "so we provided Violet with a remote video interpreter service, which gave her immediate access to sign language interpreters."

"Violet claims that we didn't do enough," said Carolyn.

(Please see *Mumbles ...* on p. 2)

Mumbles ...

(Continued from p. 1)

"Most significant, she wanted Tim transferred."

Bent over backward

"Geez," said Nathan. "Violet never even gave our accommodation solutions a chance. We bent over backward to install the equipment and train managers in how to use it. But she told us that she didn't want to use the remote video interpreter. She even said, 'Why is everybody making such an issue about the remote interpreter? I don't need it. There is no communication issue. Just talk to me.'"

"Violet wasn't satisfied with the remote interpreter because it wasn't one of her requested accommodations," said Carolyn.

"We thought that the remote interpreter was a good option," said Nathan.

"Regardless, we gave Violet the other accommodation that she asked for, which was management training on the accommodation of deaf employees."

"Violet claims that the training wasn't effective because one of her managers didn't go," said Carolyn.

Let's fight this

"Yes, but Tim attended the training," said Nathan. "Let's fight this lawsuit."

Result: The company won. The court ruled that the worker couldn't prevail on a disability bias lawsuit because the company took adequate steps to help her. The judge noted that the company had an obligation to work with her to identify accommodations but not to simply accept her preferred accommodations.

For instance, observed the

court, the company absorbed the cost of providing a remote video interpreter, which it considered an acceptable accommodation.

Not realistic

Moreover, it wasn't realistic for the employer to transfer the woman's manager as she demanded. Generally speaking, management transfers can't be considered reasonable accommodations because they usually create an undue burden for companies.

And the organization provided the disability accommodation training for managers that she requested, even though not everyone attended all the sessions.

Cite: *D'Onofrio v. Costco Wholesale Corp.*, U.S. Court of Appeals 11, No. 19-10663, 7/6/20.

What it means to you

When a disabled member of your crew requests an accommodation, you aren't necessarily obligated to provide exactly what the person asks for. In fact, the only requirement is that you engage in the interactive process of identifying potential accommodations.

In this case, the company devoted a considerable amount of time and resources in an effort to accommodate the woman. However, she wasn't satisfied with the company's actions, so she sued, claiming that the employer didn't give her precisely what she wanted. But the company wasn't obligated to offer her exactly what she asked for.

Bonus: Keep a record of the efforts you make to accommodate a disabled worker. It could prove useful if an employee later alleges a violation of a disability discrimination law.

You make the call

Manager not pleased to hear of crew member's pregnancy

"Bailey is suing us for gender discrimination," said HR Manager Alan Frankel. "She claims that she was fired because she was pregnant."

"Bailey was terminated because of her poor communication skills," said Supervisor Margie Brunton.

"Bailey says that her communication problem was a smoke screen for pregnancy bias," said Alan.

"What makes her claim that?" asked Margie.

"It all started when Bailey had a meeting with her boss," said Alan. "For most of the conversation, the manager was smiling. That is, until Bailey

announced her pregnancy. Right away, her supervisor's demeanor changed. Her expression turned stern, and her voice became a monotone."

"Bailey is reading too much into her boss's reaction," said Margie.

"Bailey doesn't think so," said Alan. "Her manager asked her how much leave she'd need and then ended the meeting abruptly."

"One uncomfortable discussion doesn't change the fact that our termination decision was supportable," said Margie.

Came to a head

"Bailey disagrees," said Alan. "According to Bailey,

things came to a head during another meeting with her supervisor following the pregnancy announcement."

"What happened during that discussion?" asked Margie.

"Bailey was told that she had communication problems," said Alan. "She claims that she'd never previously heard a word about communication issues. Worse, she was fired over the alleged communication concerns she wasn't even aware of."

"Bailey did have communication issues," 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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legal news for supervisors

Pregnant woman fired without an explanation

One company just learned the cost of terminating a pregnant employee without providing her with an explanation for the decision: \$42,500.

That's how much Multi-South Management Services, Memphis, TN, has agreed to pay in order to resolve an EEOC gender bias lawsuit.

The trouble started when Multi-South acquired Lynd Co., Montgomery, AL, and retained all of Lynd's employees – except one.

The one worker who wasn't kept, Rochell Crawford, was let go after she told Multi-South managers that she was pregnant.

Rather than provide Crawford with a justification for the dismissal, managers simply stated that they were moving forward without her,

then wished her good luck with her pregnancy.

Crawford was so unhappy that she contacted the EEOC, which sued for gender discrimination based on pregnancy. To make the lawsuit disappear, Multi-South paid the settlement.

Based on EEOC v. Multi-South Management Services.

EEOC: Opioid addicts need accommodations

Suppose one of your crew members told you that he or she is addicted to an opioid such as codeine, morphine, or oxycodone and then asked for an accommodation of the addiction – would you have to provide an accommodation?

Maybe.

If the worker has a valid prescription for the drug, you must work with him or her to find an accommodation, or risk a disability discrimination

lawsuit. However, if the drug is being taken illegally, no accommodation is required.

That's your takeaway from a recently issued EEOC technical assistance document on the use of opioids in the workplace.

Written for employees, the document states that opioid addiction is a medical condition that can be considered a disability under the ADA. However, the EEOC also pointed out that a reasonable accommodation isn't required if the opioid is being used illegally without a prescription.

According to the technical assistance document, workers also must be provided with an accommodation if they're using opioids under the direction of a doctor because they're participating in a treatment program designed to target the addiction.

New legal rulings

Does surgery qualify as an ADA disability?

A word to the wise: Surgical procedures aren't typically considered disabilities covered under the ADA.

What happened: A female crew member underwent surgery for her obesity. While she was on leave following the surgery, she was reassigned to a different job with the same pay. She was unhappy with the reassignment, however, and she let her boss know that she didn't like it.

Legal challenge: The woman sued for discrimination under the ADA, arguing that she was reassigned because she was regarded as disabled.

Company's response: She doesn't have a disability as defined by the ADA.

Ruling: The employer won. The court ruled that a one-time surgery isn't considered an ADA-covered condition.

Cite: *Lyons v. Katy Independent School District*, U.S. Court of Appeals 5, No. 19-20293, 6/29/20.

Company tripped up by uneven discipline

Beware the risks posed by inconsistent discipline of crew members for similar offenses.

What happened: A supervisor twice asked a 62-year-old worker when he planned to retire. Later, the employee was fired for falsifying customer surveys.

However, there was evidence that managers encouraged the fabrication of survey responses.

Legal challenge: The worker sued for age bias, claiming that younger staffers also falsified surveys but weren't fired.

Company's response: He fabricated customer surveys.

Ruling: The company lost. The court pointed to the remarks about retirement as proof of age bias. Plus, younger folks also altered customer surveys.

Cite: *Garren v. CVS RX*, U.S. District Court, E.D. Tennessee, No. 3:17-cv-149, 8/28/20.

focus: microaggressions

Why you can't just ignore subtle acts or comments that could be discriminatory

As a frontline supervisor focused on stamping out discrimination on your watch, you're undoubtedly on the lookout for overt statements or actions that could reveal an obvious bias.

But it's also important to pay attention to subtle discriminatory comments or behaviors that might result in a costly lawsuit.

For instance, employees sometimes reveal bias through microaggressions, which are subtle or even unintentional statements or actions that can be offensive to workers who are members of a protected class.

Here's an example: A white crew member says to a Black coworker, "You're very articulate." At first, the

statement appears to be complimentary, but the Black employee might see things differently, interpreting the comment as an implication that most Black folks aren't articulate. Another example: Someone says to an older employee, "Aren't you a bit overqualified?" The older staffer might read the statement as "Aren't you awfully old to be doing this?"

The worst reaction

In order to decrease the chances that these subtle microaggressions could lead to litigation, remember that you can't just let them slide. The worst reaction a manager can have to biased behavior is to sweep it under the rug.

If you notice

microaggressions among your crew members, talk to your staffers about them. Make sure everyone understands that these subtle acts of bias won't be tolerated.

You also should act right away if you hear or see a troubling microaggression. Pull aside the person who made the comment or engaged in the behavior. During the conversation, don't jump to conclusions by making statements such as "You're racist."

It's better to ask questions such as "What did you mean by that comment?" Allow the staffer to explain himself or herself, but make it clear that any more offensive behaviors or comments will result in progressive discipline.



legal developments

Was it OK for employer to fire woman while she was still out on FMLA leave?

Supervisor’s take-home: Yes, you can fire or discipline workers while they’re on FMLA leave. Just make sure you can justify your decision.

What happened: While a female staffer was on FMLA leave, her employer decided to initiate a restructuring process that would lead to the elimination of six positions.

To determine who’d be on the chopping block, managers examined three years’ worth of performance ratings, test scores and disciplinary records for all 16 employees.

What people did: Because the woman ranked below her coworkers based on the cutback criteria, she was laid off. But here’s the catch: The woman was still out on FMLA leave

when the termination decision was made. And right before the staffer had gone on FMLA leave, her manager had given her flowers and a thank-you note because she’d done a good job with one assignment.

Legal challenge: The woman sued for FMLA retaliation. She said that the timing of her layoff – while she was still on leave – proved ill intent. She contended that the low scores she received under the layoff criteria were fabricated, pointing to the flowers and thank-you note that she’d received as proof she was a good performer.

Result: The company won. The court ruled that the woman wasn’t retaliated against for taking FMLA leave.

The judge said that the employer implemented a rigorous process that focused on performance in deciding whom to target for dismissal. The court didn’t put much weight on the thank-you note and the flowers that the woman had been given as proof that she was doing a good job. The objective criteria used for the layoff showed that she didn’t stack up well against her coworkers who weren’t let go.

The skinny: Courts usually look favorably on companies that can point to a rigorous, systematic process for reducing their workforces.

Cite: *Button v. Dakota, Minnesota and Eastern Railroad Corp.*, U.S. Court of Appeals 8, No. 19-1398, 6/30/20.

You make the call: The Decision

(See case on page 2)

No. The company lost. The court ruled that a jury should decide whether the woman was discriminated against because of her gender.

There were two things that convinced the judge to rule against the company. First, the manager reacted poorly to the woman’s pregnancy announcement. The demeanor of the supervisor suddenly went from happy and smiling to stern.

Second, the company’s justification for terminating the woman was suspicious. The staffer had never previously been told about alleged communication problems. Then, out of the blue, the woman was such a poor communicator that she needed to be fired right away. There wasn’t even a token effort to help her improve her performance deficiencies.

What it means: Surprises are never a good thing

It’s never good for workers to be surprised when they learn about performance problems. Worse, these are the types of surprises that lead to costly lawsuits.

Keep in mind the value of ongoing feedback. Staffers shouldn’t have to wait until a formal performance review to find out that they may have performance-related shortcomings.

Furthermore, workers should be given the time and opportunity to turn around performance deficiencies. The failure to provide workers with a chance to correct problems before terminating them never looks good in a court of law.

Based on *Lindemer v. Polk County, MN*.



legal nightmare

Upset about his boss’s hostile behavior, Cuban staffer tries to set himself on fire

Overview

Distraught about the never-ending barrage of offensive comments directed at him and his fellow Cuban employees, a crew member attempted to light himself on fire at work.

The scenario

After engaging in a physical altercation with a Cuban staffer, Adam Soto, a supervisor with Trees, Inc., Tampa, FL, sought revenge on all Cubans employed by the company.

On a daily basis, Soto described Cuban workers as “sh-tty Cubans,” “f-ck-ng Cubans” and “crying, whining Cubans.”

He also decided that the company should change its hiring policies so that there’d

be “no more Cuban people working here.”

Unhappy about the offensive comments, a group of Cuban employees, including a man named Alexis Fernandez, decided to talk to upper-level management about Soto’s behavior. But the top dogs ignored the complaints, and Soto continued to denigrate Cuban employees.

Because he was so upset about the hostile workplace, Fernandez tried to commit suicide on the job. He doused himself in gasoline, but as he was reaching for a lighter, a coworker tackled him to the ground and prevented him from killing himself.

Following the suicide attempt, Fernandez was fired.

Legal challenge

Fernandez sued for a hostile workplace based on his national origin.

The employer argued that Fernandez was terminated for trying to kill himself at work.

The ruling

The company lost. The court ruled that Fernandez proved that he endured an intolerable work environment.

The court determined that the offensive behavior was severe – it was a relentless barrage of foul language and venom directed at Cubans. It was also pervasive, said the court, because it happened almost every day.

Based on *Fernandez v. Trees Inc.*, d/b/a *Trees Acquisition*.