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## Woman sues boss after he fires her for declining sex with him

*Female staffer pays high price for breaking off their relationship*

### The scenario

A female employee was involved in a consensual romantic relationship with her male supervisor. When the woman broke off the relationship, her manager became extremely upset.

He began to sexually harass her and let her know that he was unhappy that she'd ended the relationship. He also threatened an adverse employment action if she didn't have sex with him. She rejected his advances.

When a different female employee accused the male supervisor of sexual harassment, the woman reluctantly agreed to participate in the investigation of the other

woman's claims. The male boss was outraged with the woman's participation in the investigation, even going so far as to besmirch her actions on a local radio station.

The woman was distraught about the radio interview and began to suffer from depression as a result of it.

A short time later, the male supervisor fired the woman.

### Legal challenge

The woman sued her former supervisor for intentional infliction of emotional distress.

### The ruling

The supervisor lost. The court refused to dismiss the woman's lawsuit. The judge

said she provided adequate evidence that the behavior of the manager was intentional, reckless and so outrageous that it wouldn't be tolerated in a civilized society. And the woman experienced mental health issues as a result of the supervisor's actions.

### The skinny

While it's rare for crew members to prevail in lawsuits against their direct supervisors, it can happen, especially when the manager thinks it's OK to engage in outrageous conduct.

**Cite:** *Houston v. Memphis Light, Gas and Water Division, et al.*, U.S. District Court, W.D. Tennessee, No. 2:21-cv-2393, 3/28/22.

## Did employer have to justify its decision to deny woman's disability accommodation?

*Requested schedule change was nixed despite her doctor's strong recommendation*

"We wanted to accommodate

Dawn's request to change her schedule," said Supervisor Nathan Hawkins, "but it just didn't make sense to do so."

"Dawn says she sought a schedule change so she could better handle her anxiety issues," replied HR Director Carolyn McGill. "She alleges that our failure to let her work a different schedule was a violation of the ADA, the Americans with Disabilities

Act, and now she's suing us for disability discrimination."

### Performing poorly

"I'm disappointed to hear that," said Nathan, "but we couldn't have all these schedule changes going on, and Dawn was performing poorly, so it made sense to keep her on her existing schedule."

"How did we respond when Dawn first told us that she wanted to rework her

schedule?" asked Carolyn.

"We asked Dawn to provide us with a doctor's note stating why she needed a different schedule," said Nathan. "She gave us a clipped note that didn't really explain how a revised schedule would actually help her deal with her anxiety problem."

"Dawn alleges that the doctor's note specifically stated that the schedule change would be a reasonable

accommodation for her anxiety issues," said Carolyn. "Is that correct?"

### Part of the story

"Yes, that's correct," said Nathan, "but it's only part of the story. Dawn herself couldn't coherently explain why she needed the schedule alteration. And like I said, her performance was poor, so we denied her request."

"Would the schedule  
(Please see *Justify decision* ... on p. 2)

## Justify decision ...

(Continued from p. 1)

change have been a significant burden for us?" asked Carolyn. "Would it have led to increased costs or any other major issues?"

"Well, no," said Nathan. "It wouldn't have been a big deal, but we just didn't think it was justified."

### Quit the job

"How did Dawn respond after we refused to rework her schedule?" asked Carolyn.

"She quit the job," said Nathan. "We haven't heard from her until now."

"It sounds like Dawn was unable to justify her need for a revised schedule," said Carolyn. "We'll fight this lawsuit."

**Result:** The company lost. The court ruled against the employer and awarded the woman back pay, damages for emotional

distress and reinstatement to her job at the hours she'd requested.

### Refused to consider

The employer challenged the ruling, but the appeals court refused to reconsider the verdict.

The judge said the employer failed to reasonably accommodate the disabled employee.

The court was most swayed by the fact that the crew member's requested schedule change wouldn't have created a so-called undue burden for the company – it wouldn't have cost any money and it wouldn't have affected the operation of the business in any significant way.

The judge observed that under the ADA, employers have an obligation to provide reasonable

accommodations to disabled workers unless a company can provide evidence that doing so would be a major burden.

### No plausible reason

The court also pointed out that the employer failed to offer any plausible reason for turning down the woman's request to revise her schedule other than vague allegations of poor performance.

The woman gave the employer a doctor's note stating that the schedule change was a reasonable accommodation, but the company decided that it knew more about the woman's mental health treatment than her medical provider did.

*Based on Coomer v. Opportunities for Ohioans with Disabilities.*

## What it means to you

If a disabled crew member requests a reasonable accommodation for his or her condition, you aren't always obligated to provide the accommodation. However, you are obligated to engage in the interactive process to identify potential accommodations.

If you decide to turn down a disability accommodation, you have to show that providing it would have presented a so-called undue hardship for the operation. The hardship could be higher costs or an unjustified burden on coworkers.

It's always important to make sure the reason offered for denying an accommodation is solid and supportable.

**Bonus:** You simply can't ignore a doctor's note that states an accommodation is reasonable and would help an employee deal with a disability.

## You make the call

### Black employee referred to as a 'lazy monkey a-s n-gg-r'

"Now I've heard everything," said Supervisor Margie Brunton. "Anthony gets fired because he pushed his boss against a wall, but now he's suing us for a hostile workplace based on his race?"

"That's about the size of it," replied HR Manager Alan Frankel. "Can you tell me more about the incident that led to Anthony's termination?"

"Sure," said Margie. "Anthony was dropping off some paperwork in his manager's office, but the boss was on the phone, so Anthony tossed the document on his supervisor's desk.

Well, his manager didn't like that very much, so he threw the paperwork on the floor, hung up the phone and walked toward Anthony."

### Lunged at the boss

"Then what happened?" asked Alan.

"The supervisor had a screwdriver in his hand," said Margie, "and Anthony thought he was going to attack him, so Anthony lunged at his boss and pinned him against the wall."

"It's never a good thing when you physically assault your manager," said Alan.

"It's not, of course,"

said Margie. "We quickly fired Anthony."

"That makes sense," said Alan, "but now Anthony says that a few months before the incident that led to his dismissal, his boss called him a 'lazy monkey a-s n-gg-r' in front of his coworkers. Anthony says he complained about the offensive statement up the chain of command, but he was ignored."

"It was an intolerable comment, for sure," said Margie, "but a one-off statement hardly amounts to a hostile work environment. We should fight this lawsuit."

Did the company win?

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

## HR Manager's LegalAlert FOR SUPERVISORS

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# legal news for supervisors

## Respond promptly to claims of harassment

A recently passed law significantly increases the importance of responding promptly and effectively to any and all allegations of sexual harassment that are brought to your attention.

The law signed by New York Gov. Kathy Hochul (D) directs the New York State Division of Human Rights to establish a toll-free confidential hotline for employees to file complaints of sexual harassment.

The line will be staffed by unpaid attorneys who will advise callers of their rights to pursue legal action against their employers based on the specifics of each case. The attorneys answering the phones will be barred from soliciting business from the callers.

Before the hotline

becomes functional on July 14, 2022, employers must include information about the hotline in any materials they're required to provide or post regarding sexual harassment.

Even though the hotline applies only to New York employers for now, it's likely that other states will soon decide it's a good idea to have a hotline too.

The skinny: More often than not, harassed workers first submit claims internally before going outside, so an effective response by you is likely to discourage workers from using the hotline.

## Employee fired right after positive review

Don't forget that a favorable performance review provided just before a worker is terminated rarely

helps defend against a claim of unlawful discrimination.

Consider the plight of Cassone Leasing, Inc., Ronkonkoma, NY, which just agreed to pay \$85,000 to a woman who was fired because she was pregnant.

When Katie Payne accepted a job with Cassone, she was 12 weeks pregnant but wasn't showing; Payne didn't tell the hiring manager about the child. Thirty days later, she was given a review that rated her performance as above satisfactory.

About one week later, her boss learned that she was pregnant, and Payne was fired right away, so she contacted the Equal Employment Opportunity Commission (EEOC), which sued for pregnancy bias.

*Based on EEOC v. Cassone Leasing, Inc.*

## New legal rulings

### Employee fired after complaining of bias

Proceed cautiously before firing a staffer who has formally complained of discrimination.

**What happened:** A Black woman thought her manager favored white workers, so she complained to the Equal Employment Opportunity Commission (EEOC). As soon as her supervisor learned of the complaint, the woman was fired.

**Legal challenge:** The woman sued for retaliation.

**Company's response:** She had no evidence of discrimination.

**Ruling:** The company lost. The court said the timing of the woman's dismissal was a potential indicator of retaliation. Plus, the employer offered no supportable reason for terminating the woman.

**Cite:** *Hunter v. Crossmark*, U.S. District Court, W.D. Texas, No. SA-21-CV-00638-FB, 4/5/22.

### Supervisor wanted a full team all the time

When a worker asks for time off for medical reasons, don't talk about potential staffing challenges related to the leave.

**What happened:** A woman requested time off under the Family and Medical Leave Act (FMLA), so her manager told her that she was sick a lot and that the boss needed a full team all the time. Nevertheless, the woman went on leave.

While she was on leave, several performance problems were found, and she was fired after she got back from leave.

**Legal challenge:** The woman sued for FMLA retaliation.

**Company's response:** She was let go for poor performance.

**Ruling:** The company won. The court said that while the boss's comments weren't wise, they didn't change the fact that the woman was a poor performer.

**Cite:** *Anderson v. Nations Lending Corp.*, U.S. Court of Appeals 7, No. 21-1885, 3/9/22.

## focus: employee terminations

### Here's what you should consider before pulling the plug on a crew member's job

Before you terminate a staffer, it's important to consider the potential legal ramifications of what you're doing.

Keep in mind that the vast majority of court cases alleging discrimination are brought by employees who were fired. Sometimes, the organization being sued is unable to prove that the termination was justified and winds up on the losing end of a costly bias case.

One of the best ways to avoid an unfavorable court ruling is to consider on the front end how the termination will look on the back end, noting that judges and juries are likely to ask one key question: Was the termination justified and

fair? That is, did the employer really terminate the crew member for poor performance or was there some other motivation?

#### Positive reviews

That's why it's important to consider whether the individual being let go has a history of positive reviews that could cast doubt on the claim that the dismissal really was motivated by poor performance.

Of course, a previously solid performer can start to go downhill. The critical consideration is that you can prove that's what happened. Be sure to create a paper trail of negative performance reviews to show that the worker's

performance has slipped since the last review. But don't wait until the annual review to start your paper trail. Instead, track verbal and written warnings as they're being issued to the person in an effort to get him or her turned around.

In addition, judges and juries look to see whether the employer gave the staffer a chance to save his or her job. Make sure your verbal and written warnings spell out exactly what the crew member must do to meet your expectations.

Always be certain that you can document how the individual fell short of those expectations before you actually pull the plug on his or her employment.



## legal developments

### Was it OK to deny a safety-sensitive job to a disabled man using opioids for pain?

**Supervisor’s take-home:** Don’t forget the importance of undertaking a so-called individualized assessment before determining that a disabled job seeker can’t safely perform dangerous work.

**What happened:** A man was offered a job as a forklift operator pending completion of a mandatory drug test. When the test revealed that the applicant was taking opioids to treat persistent pain, he was asked to provide a doctor’s note stating that he could safely drive forklifts. However, the doctor’s note produced by the job seeker was vague and didn’t directly address the question of safety.

**What people did:** The employer asked for another

doctor’s note, but the second note failed to allay managers’ fears that the applicant would be a safety risk, so he was turned down for the job.

**Legal challenge:** The jilted applicant sued for disability discrimination, arguing that he was denied the job because the prospective employer regarded him as disabled. He also pointed out that he’d safely operated forklifts in a previous job while taking opioids for pain.

**Result:** The employer lost. The court refused to dismiss the lawsuit. The judge first noted that the company regarded the man as disabled. Then the court said the employer failed to undertake

an individualized assessment in order to determine whether the job candidate would actually be a safety risk while operating forklifts. If the doctor’s note wasn’t adequate, managers should’ve contacted the doctor directly to get more information. The court also pointed out that the applicant had safely operated forklifts in a previous job.

**The skinny:** Judges rarely look favorably on companies that fail to engage in the mandatory interactive process before denying a job to a disabled person.

**Cite:** *Hartmann v. Graham Packaging Co.*, U.S. District Court. S.D. Ohio, No. 1:19-cv-488, 1/25/22.

### You make the call: The Decision

(See case on page 2)

No. The company lost. The court refused to dismiss the lawsuit.

The judge pointed out that the employer was probably justified in terminating the worker after he engaged in a physical confrontation with his boss. However, the court also ruled that the Black employee endured a hostile work environment.

Yes, it’s generally true that one offensive statement doesn’t prove a hostile workplace, but the court said the comment directed at the Black man in front of his coworkers was so abhorrent that it could be considered adequate evidence of workplace hostility. The judge said the N-word is one of the most repulsive phrases in the English language.

The court also noted that the employer failed to take action after the Black staffer complained about his boss’s use of the N-word.

#### What it means: You can’t ignore use of the N-word

Avoid the temptation to turn a blind eye to comments that are patently offensive. In particular, the use of the N-word simply can’t be ignored. In this case, a worker who physically assaulted his boss still won in court because managers failed to do anything after learning that he’d been called the N-word.

If you hear the N-word or some other severely offensive phrase, discipline the person who made the comment right away. And make sure anyone who heard the phrase knows about your disciplinary steps.

*Based on Woods v. LaToya Cantrell, et al.*



## legal nightmare

### Black woman alleges bias-related crime after male boss propositions her for sex

#### Overview

A Black woman was deeply offended when a male supervisor propositioned her for sex during a business dinner, then pulled on her hair and said she could leave her long braids behind.

#### The scenario

After she started working for Amazon in Washington, DC, Charlotte Newman, a Black woman, thought she was discriminated against based on her race. For instance, she said she was repeatedly turned down for promotions because of race.

But Newman’s career at Amazon took a dramatic turn for the worse while she was having dinner with one of

her managers, Andres Maz. During the meal, Maz repeatedly called Newman beautiful and great. At one point, he got up and sat next to her while placing his hand on her thigh and grabbing and groping her right leg.

Maz implored Newman to have sex with him, but she refused. As Newman was leaving after dinner, Maz insisted that she stay. Then he yanked on her hair, which was in long braids, and said “You can leave this behind.”

About nine months later, Newman filed an internal complaint against Maz and another male manager for sexual harassment and race discrimination. Amazon investigated her complaint,

but neither supervisor was disciplined. A few months later, Newman filed a formal complaint of bias with the Washington Office of Human Rights. Amazon fired Maz.

#### Legal challenge

Newman sued Maz for a bias-related crime.

#### The ruling

The supervisor lost. The court said Newman’s case could proceed because Maz sexually assaulted her during the dinner and he did so based on her race – when he pulled on her hair and said she could leave it behind, he was reinforcing a stereotype about Black women’s hair.

*Based on Newman v. Amazon.*