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Supervisor: 'No one else on this team is allowed to get pregnant'

Woman later tells him she's planning to accept an egg donation

The scenario

A woman was attending an off-site meeting with her team – which included two other women who'd recently become pregnant – when the male team leader said, "No one else on this team is allowed to get pregnant."

Even though the woman wasn't pregnant at the time, she was worried about the comment because she and her husband were undergoing in vitro fertilization (IVF) in an attempt to have a child.

Two weeks after the team leader warned everyone else not to get pregnant, the woman reluctantly informed him that the IVF treatments weren't working and that she and her husband had agreed

to find an egg donor. She told the manager that she needed to take a day off to undergo a medical procedure related to the egg donation.

A few days later, the team leader sent an email to other supervisors requesting feedback on the woman's performance. He was told that she often missed important meetings. The woman was fired for nonperformance.

Legal challenge

The woman sued for gender discrimination.

The ruling

The company lost. The court refused to dismiss the lawsuit. The woman provided sufficient proof that she

might have been fired because of her pregnancy and gender.

The judge pointed to the warning that no one else on the team was allowed to get pregnant as potential proof of bias. And the court noted the suspicious timing of the woman's firing: shortly after she told her boss that she was accepting an egg donation in an effort to get pregnant.

The skinny

It's always better to try to accommodate a pregnant employee than to warn everyone that no one else is allowed to get pregnant.

Cite: *Rehm v. YMCA of Greater Waukesha County*, U.S. District Court, E.D. Wisconsin, No. 21-cv-237, 12/26/24.

Company learns the high cost of a slipshod investigation of misconduct: \$39.6 million

Black man sues after he's terminated for allegedly touching a woman inappropriately

"There was hardly a day that went by that Eric wasn't complaining about something," said Supervisor Nathan Hawkins. "He filed multiple grievances about his job assignments and working conditions. The man was a walking complaint machine."

"Eric contends that his complaints were legitimate," replied HR Director Carolyn McGill. "He says we ignored most of his allegations, so he just kept complaining."

"He definitely kept complaining," said Nathan. "In fact, he not only filed multiple internal complaints, but he also submitted four complaints to the EEOC, the Equal Employment Opportunity Commission, contending that he was being discriminated against because he's Black."

So much fault

"It's unfortunate that Eric found so much fault with his

job here," said Carolyn. "Even more unfortunate is the fact that he just initiated a discrimination lawsuit against us, arguing that he was terminated because of his race."

"That's absurd," said Nathan. "Eric was dismissed because he sexually harassed a female coworker."

"When did we learn that Eric had harassed a woman?" asked Carolyn.

"Right after it happened," said Nathan. "According to

the woman, she was crouched over lifting a heavy box when Eric walked up behind her, grabbed her hip and said, 'Hey, girl.' The woman wheeled around and yelled out, 'You touched me inappropriately.' She then filed a sexual harassment complaint against Eric."

Allegation investigated

"I assume we assigned someone to investigate the

(Please see \$39.6 million ... on p. 2)

\$39.6 million ...

(Continued from p. 1)

woman's allegation," said Carolyn.

"We did, of course," said Nathan. "The investigator said Eric's version of events changed during the interview. We eventually fired Eric for an unprovoked assault on a coworker."

Accidental contact

"Eric says the allegedly inappropriate touching was accidental," said Carolyn. "He claims that he lost his balance, fell over and grabbed the woman to steady himself."

"Well, the investigator didn't believe Eric," said Nathan.

"Eric says the decision to dismiss him was made before the investigation was even finished," said Carolyn. "He points out that the supervisor who fired him had drafted a

termination letter before the investigation was even concluded."

"The supervisor had the letter prepared in case the evidence showed that Eric had violated our policy against sexual harassment," said Nathan. "We should challenge this lawsuit."

Result: The company lost. The court refused to dismiss the lawsuit, and a jury subsequently awarded \$39.6 million in emotional damages and \$198 million in punitive damages to the Black man. However, the employer was able to get the punitive damages award overturned on appeal.

Because of his race

The court found – and the jury agreed – that the Black man provided adequate evidence that he was let go because of his race.

The company's failure to investigate any of the Black worker's previous complaints and grievances hurt its position in court. Yes, the staff member complained a lot, but the employer was duty-bound to check out his allegations and take steps to address his concerns. Instead, the employer turned a blind eye to his claims of race discrimination.

Already drafted

In addition, the fact that the supervisor who made the decision to fire the Black man had already drafted a termination letter before the investigation was finished made it look like the crew member was fired because of his race.

Cite: *Gratton v. United Parcel Service*, U.S. District Court, E.D. Washington, No. 1:22-cv-3149, 11/14/24.

What it means to you

Take note: It's never a good idea to draft a termination letter before an investigation into a claim of alleged misconduct has been completed.

In this case, the supervisor who fired the Black worker drew up a dismissal letter prior to the completion of the investigation of the sexual harassment complaint made against the staffer. The fact that the letter was already finished made it look like the decision to let the man go had already been made and was motivated by his race.

That's why it's important to hold your fire on terminations. Don't draft a letter or discuss a possible dismissal until you have all the facts. Then evaluate only the facts in front of you to make your final decision, casting aside all preconceived ideas about what might have happened.

You make the call

Woman denies employer's claim that she quit her job

"I know Robyn and her new boss didn't get along very well," said Supervisor Margie Brunton. "Robyn was really stressed about their relationship, so we suggested that she take a few weeks off under the FMLA, the Family and Medical Leave Act."

"And Robyn agreed with that suggestion?" asked HR Manager Alan Frankel.

"She did," said Margie. "However, before Robyn began her leave, she handed in her laptop, radio, vest and ID badge. We assumed that meant she was quitting."

"Robyn argues that our

assumption was incorrect," said Alan. "She says she wasn't actually resigning, but was simply handing in her work materials so someone else could use them while she was on leave. Now she's suing us for FMLA interference."

Misinterpreted

"Robyn is confused," said Margie. "When she handed in her work items, she specifically stated, 'I'm done. I'm out. I'm outta here.'"

"According to Robyn," said Alan, "her comments were misinterpreted. She simply meant that she'd

be out until the end of her approved leave."

"Keep in mind that several weeks before she began her leave," said Margie, "Robyn had contacted the HR department to find out how she could resign."

"Robyn says she was thinking about resigning but hadn't made a final decision," said Alan.

"Robyn has a selective memory," said Margie. "She indicated that she was considering whether to resign, then said she was out of here. We were justified in accepting her voluntary resignation. 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

Agency says it's still 'open for business'

Don't believe the reports you may have heard that the federal government is no longer enforcing workplace discrimination laws – the reports aren't accurate.

In fact, a newly released memo from the Equal Employment Opportunity Commission (EEOC) emphatically states that the independent agency is still "open for business."

Titled "The State of The EEOC and Frequently Asked Questions," the memo acknowledges that the agency no longer has a quorum because two commissioners have been fired. However, the lack of a quorum won't stop the EEOC from vigorously enforcing antidiscrimination laws, according to the document.

"The lack of a quorum of

commissioners doesn't impact the intake, processing, investigation, or resolution of charges of discrimination, nor does it impact the notices of right to sue," reads the memo, which also indicates that the agency will continue to accept bias complaints.

The memo further states that an agency resolution passed in 2021 provides limited authority for the filing of EEOC lawsuits.

Your bottom line: Despite the upheaval in Washington, you still have a legal duty to root out workplace bias, and the EEOC still plans to pursue lawsuits against companies it believes are trampling on the rights of employees.

Gender-identity bias no longer a priority

How will the priorities of the EEOC change under the Trump administration?

A recent memo from acting chair Andrea Lucas provides a few clues. First, according to the memo, the EEOC will roll back the gender-identity agenda of the previous administration. According to Lucas, the EEOC now defines sex as a person's immutable biological classification as male or female; the concept of gender identity is too subjective, said Lucas. That means, for instance, that the EEOC is unlikely to pursue legal action against companies that insist men and women use bathrooms consistent with their biological sex.

Lucas also said the EEOC will no longer enforce the gender-identity section of the agency's "Enforcement Guidance on Harassment in the Workplace," which was released last year by the previous administration.

New legal rulings

Woman claims male manager stalked her

Employers that disregard multiple complaints of sexual harassment often wind up with a costly lawsuit on their hands.

What happened: A woman alleged that a male boss was harassing her by staring at her in a sexual manner, stalking her and invading her personal space. She complained multiple times about the unwelcome conduct, but she was ignored.

Legal challenge: The woman sued for sexual harassment.

Company's response: The alleged misconduct wasn't severe or pervasive.

Ruling: The employer won. The court said the offensive behavior wasn't severe or pervasive enough to change the terms and conditions of the woman's employment.

Cite: *Simms v. Maryland Office of the Attorney General*, U.S. District Court, D. Maryland, No. 23-cv-2707, 1/16/25.

No accommodation for lifting restriction

If a staffer can't perform the essential functions of the job, you're not obligated to create a new position for him or her.

What happened: A woman fell from a ladder and injured her shoulder. She was allowed to handle light-duty jobs during her recovery. Eventually, her doctor released her to work with a lifting restriction of 10 pounds. The employer fired the woman because lifting was an essential function of her job.

Legal challenge: The woman sued for disability bias.

Company's response: We weren't legally obligated to create a new position for her.

Ruling: The company won. The woman was unable to handle her essential job functions with or without an accommodation.

Cite: *Zamora v. Costco*, U.S. District Court, N.D. California, No. 23-cv-04223, 1/3/25.



focus: bystander intervention

Train your crew members on how to safely respond to workplace aggression

If one of your workers was being sexually harassed, would the other members of your crew know what to do?

If you're not sure whether your staff members would intervene to stop harassing behavior, you might want to train them on how to respond to workplace aggression in real time, which could reduce the chances that a victim of unwelcome aggression will later sue for discrimination.

First, let your staffers know about the bystander effect, which happens when individuals in a group fail to intervene because they think someone else will take care of it. In some cases, you want your staffers to become active bystanders – that is, people who acknowledge an

unacceptable situation and take steps, either directly or indirectly, to address it.

Caution: Bystander intervention doesn't mean crew members should immediately and physically intervene every time they see unacceptable conduct.

The four D's

Rather, it means workers should be trained to follow the four D's of bystander intervention:

Direct: If the situation could become harmful to the victim of the aggression, your crew members could directly insert themselves to help defuse it. Example: Workers could ask the person being targeted by the aggressor whether he or she is OK.

Delegate: When a staffer feels uncomfortable directly intervening because of the possibility of violence, he or she could alert someone else, such as a nearby supervisor, to the situation.

Distract: It might make sense to address the aggressive behavior by distracting the perpetrator or the victim in an effort to disrupt things. Example: Workers could ask one of the people involved in the situation a question or spill water on one of them.

Document: If it's safe to do so, a crew member could pull out a cellphone and begin filming the incident, which could prompt the perpetrator to break off the attack.



legal developments

Older staffer who refused to work with behavioral coach sues for unlawful bias

Supervisor’s take-home: If a member of your crew isn’t getting along with his or her coworkers, you can legally ask the person to participate in behavioral coaching.

What happened: A 64-year-old male staffer wasn’t well liked by his coworkers. In fact, 37 colleagues had formally requested that he not work with them. In response to the concerns of the man’s coworkers, his employer asked him to participate in behavioral coaching for one year.

What people did: The older staffer refused to work with a behavioral coach. For the first time, he alleged that he was being targeted in an attempt to force him to retire. He was told to either

participate in the coaching or accept a termination. The man still refused to take part in the coaching, so he was let go.

Legal challenge: The worker sued for age bias. As proof of discrimination, he showed that over a 10-year period, the percentage of company employees over 40 years old had dropped to 66 from 100, and the percentage of employees over the age of 60 had decreased to 20 from 50. He also noted that the average age of the workforce had dropped to 47 from 58.

Result: The company won. Despite the statistical data showing that the employer’s workforce had gotten younger, the man was still unable to prove he was

dismissed because of his age. In fact, according to the judge, the evidence showed that the older staffer was given a chance to turn around his poor performance, but he refused to participate in the recommended coaching. It wasn’t unreasonable for the employer to ask him to be coached, given the number of colleagues who didn’t want to work with him.

The skinny: Staffers who turn their backs on sincere efforts by their employers to improve their performance usually have a hard time winning bias lawsuits.

Cite: *Axmann v. Anesthesia Partners Holdings Inc.*, U.S. District Court, N.D. Texas, No. 3:22-cv-01635, 1/14/25.

You make the call: The Decision

(See case on page 2)

No. The company lost. The court said there was a dispute about whether the woman actually resigned her position, so a jury should decide who’s telling the truth.

The judge acknowledged that the staffer had asked how to quit the job, but that inquiry didn’t amount to a formal resignation. And a jury might agree with the woman that she wasn’t quitting when she handed in her work materials and said she was “out of here.” Perhaps she meant she’d be out of the workplace during her approved leave.

What it means: Be sure to clarify resignation threats

Remember: In the heat of the moment, staff members sometimes say and do things they don’t really mean. A worker could be so frustrated by the job that he or she threatens to quit, but the person doesn’t actually intend to resign.

In this case, the woman said she was “out of here,” but it was unclear whether she was quitting or saying that she’d be out of the workplace until the end of her FMLA leave.

The bottom line: Confusion isn’t your friend. When a staff member threatens to resign, be sure to seek clarification about what he or she means. Directly ask, “Are you quitting?” and wait for a definitive answer.

If the answer is yes, follow up with an email to confirm that the person has quit. Otherwise, you run the risk of letting a jury decide whether the worker actually resigned.

Based on *Chapman-Pinto v. Amazon.com Services LLC*.



legal nightmare

White boss threatens to hang Black man from a bridge, drag him behind a truck

Overview

When a Black staff member complained about potential race discrimination in his workplace, his supervisor threatened to hang him from a bridge.

The scenario

Shortly after Hayward Jones, a Black man, accepted a job with LM Wind Power Blades in Grand Forks, ND, he became concerned about the frequent utterance of the N-word by his white coworkers.

Jones’ colleagues also used other derogatory terms, such as monkey, when referring to Jones. The Black man was unable to escape the race harassment even when he was off the job and scrolling

through social media sites such as Facebook. That’s because his coworkers often tagged him in posts about white power.

When Jones complained to his supervisor about the harassment, his boss threatened to hang Jones from a bridge. The supervisor also suggested that it might be a good idea to drag Jones behind a truck.

Jones complained to a senior-level manager about the threats of violence made by his boss, but his supervisor received only a reprimand.

Things came to a head after Jones became involved in a heated online argument with a coworker about white power. When management

found out about the online conversation, Jones was terminated without warning.

The fired Black worker reached out to the Equal Employment Opportunity Commission (EEOC).

Legal challenge

The EEOC sued LM Wind Power Blades for race bias.

The ruling

The company lost. Rather than take its chances in front of a jury, LM Wind Power Blades agreed to pay \$125,000 to Jones. The company also said it would provide anti-racism training to its employees.

Based on *EEOC v. LM Wind Power Blades Inc.*