

Louisiana Employment Law Letter

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WORKPLACE CONFLICT

Hands off your employees!

Let's face it -- supervisors have a lot of responsibility and, as a result, a lot of pressure. They are usually caught between the conflicting demands of higher management, to whom they report, and their subordinates, on whom they rely to get the job done. And, as we all know, you can't please all of the people all of the time.

Now that your employees are becoming more and more demanding and sophisticated about their rights in the workplace, successfully handling workplace conflict has become a valuable and necessary skill for your supervisors. No matter how instinctive or tempting it might be to react physically to employee misbehavior, one of the golden rules of management is "hands off."

One supervisor recently learned the hard way that a "hands-on" approach to management causes more problems than it solves. Let's see how a seemingly harmless gesture turned into an unpleasant, lengthy, and undoubtedly expensive jury trial for the supervisor and his employer.

Trouble brews over employee errors

Viola Johnson worked as an instrument technician at a petroleum products company. She was responsible for ensuring that the instruments used for measuring levels of liquid in the boilers, which generated steam to operate the plant, were in working order. She reported directly to the instrument supervisor.

After the company experienced problems with a particular boiler, it was shut down for maintenance; however, when the employees attempted to restart it, they discovered that the water-level switch had been left in the bypass position. That error caused approximately \$250,000 in damage to the plant. Although Johnson was accused of causing the problem, a subsequent investigation revealed that two other employees were at fault. The employees responsible for the damage were terminated.

Several months later, another boiler was shut down for its annual maintenance, which usually took from one to two weeks to complete. Johnson and several other employees worked on it during the first weekend of maintenance. One of the supervisors working that weekend believed the maintenance to be complete and ordered that the boiler be placed back on-line. But the supervisor was wrong, and the error caused problems at the plant and required the boiler to be shut down again.

The employees continued working on the boiler through the following week. Johnson and the more experienced technicians, however, chose not to work during the second weekend. The following week, the work wasn't completed. Johnson's supervisor instructed her that she would have to work late that evening to complete her duties. Later that evening, she called her supervisor to inform him that she was unable to repair the instruments, and it was decided that they would resume working on the boiler the following morning.

Pressure heats up the workplace

Johnson's supervisor was feeling pressure from management to get the boiler back on-line. Additionally, his subordinates were still unhappy about the earlier firing of their co-workers because of the problem with the other boiler. This is a classic example of the conflicting demands supervisors often face in their jobs. As you will soon see, how a supervisor handles getting caught between the proverbial "rock and a hard place" can make all the difference.

Johnson continued working on the boiler the following morning and was in the control room when it was time to start it. When asked if it was ready to be placed on-line, however, she was hesitant to answer. Her supervisor was called to the control room and eventually had to order that the boiler be started.

Conflict reaches the boiling point

After the boiler was operational, Johnson and her supervisor left the control room, and he informed her that he was disappointed because she left less experienced employees to work on the boiler during the previous weekend. An argument ensued for several minutes. At that point, the supervisor resorted to a "hands-on" management technique that he probably later regretted.

According to the supervisor, Johnson appeared to be ignoring him during their discussion, so he placed his hand on her shoulder to get her attention. According to Johnson, however, he became angry and grabbed and pushed her. Although he only wanted her attention, he got more than he bargained for. She suffered no physical injuries as a result of the confrontation. Nevertheless, she sued both her supervisor and the company for assault and battery.

Things simmer down after narrow escape

The case went to trial before a jury, which concluded that the supervisor assaulted Johnson while acting in the course and scope of his employment but that no battery occurred.

To understand the jury's decision, you need to know the legal definitions of "assault" and "battery." *Listen closely.* An assault is a threat, coupled with the present ability to carry out the threat, that places a person in a reasonable apprehension of receiving an injury. Battery, on the other hand, occurs when one person intentionally makes offensive contact with another person.

Battery doesn't require that the actor possess a "malicious" intent or intend to inflict an injury on the other person. It occurs as long as the actor intentionally makes offensive contact with the other person without her consent. In short, an assault is a threat you can carry out, and battery is making good on it.

The jury wasn't convinced by Johnson's doctor that she suffered any emotional harm because of the incident. So the court entered judgment for the supervisor and the employer. Johnson appealed.

The court of appeal first reviewed the evidence the jury had to consider. Johnson testified that she and her supervisor were yelling at the time of the confrontation. She claimed that he was angry and expressed his disappointment in her. She also alleged that he pushed her on the shoulder and told her to "get the damned boiler going." According to her, he pushed her hard enough to move her back, after which she supposedly told him he "shouldn't have done that."

The supervisor confirmed that he and Johnson were yelling at each other. But he said Johnson turned away and stopped listening to him. He also testified that he was under a lot of pressure and that both he and Johnson were angry at the time. He said he put his hand on her shoulder to get her attention and told her to listen to him. They finished their discussion and then she walked away, according to him.

Naturally, there were no witnesses to the incident. Several employees testified that they saw Johnson and her supervisor arguing and both appeared angry, but none observed him push or touch her. The day after the confrontation, a meeting was held to discuss the delay in getting the boiler back on-line. Some of the people present at the meeting testified that Johnson openly accused her supervisor of "pushing her." Another person interpreted her statement to mean that he was pushing her to work harder. One person testified that he admitted to grabbing her. Other people at the meeting didn't recall the statement.

In short, the evidence about the confrontation was conflicting. The jury, however, apparently found the supervisor's testimony that he put his hand on Johnson's shoulder to get her attention more believable than her testimony that he grabbed and pushed her. Consequently, the court found the jury's verdict that he didn't batter her reasonable.

The supervisor and employer didn't challenge the jury's conclusion that Johnson was assaulted. Instead, they argued that she failed to prove the incident caused her any harm. The court agreed. *Viola Johnson v. Kerry English and Atlas Processing*, 2000 La. App. LEXIS 3396 (La. App. 2nd Cir. 12/20/00).

Don't blow your top, and don't touch your employees!

The supervisor and employer in this case narrowly escaped liability for a seemingly innocent gesture because the employee was unable to convince the jury that the incident caused her any harm. But this lawsuit might have been avoided if the supervisor had kept his hands off the employee!

All supervisors face conflict and feel pressure from time to time. It's part of the job. The key to survival is to keep your cool. Think before you speak and act -- don't just instinctively react to what already may be a bad situation. Consult a peer, human resources, or higher management;

plan your words and actions carefully; consider possible pitfalls and alternatives; and "sleep on it" if necessary. Those measures will help you avoid "blowing your top" and keep you from having to explain any actions you may regret to a jury.

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