

Louisiana Employment Law Letter

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RACIAL HARASSMENT

What you don't know can hurt you

You know you can be liable for sexual harassment by your supervisors. But what happens if the alleged harasser is a co-worker? In that case, you're liable only if you knew or should have known the harassment was going on and did nothing to stop it. It's now up to a jury to decide if one New Orleans employer knew or should've known. Let's see why.

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.

Problems with the trainer

A black female machine operator was hired for a 90-day "probationary" period and assigned to work the 7:00 p.m. to 7:00 a.m. shift. Her immediate supervisors were also black women, but several other co-workers and supervisors were white. She claimed that shortly after she began work, the white female employee in charge of training her began harassing her.

The employee claimed that she reported the harassment to her immediate supervisor on several occasions, but that no disciplinary action was taken until two months later, when the trainer was finally demoted based on a number of other complaints. She also claimed that the trainer "recruited" four white female employees to participate in the alleged racial harassment.

The machine operator contended the "harassers" began making false accusations to her supervisors that she was sleeping on the job and taking long breaks. She also complained they made sexually offensive comments to her and "stood over" her, watching her work. She said she was called into her supervisors' office almost on a daily basis to discuss the "false" allegations that were being made against her by her harassers.

The 'n' word

The employee claimed that on arriving at work one day, she was given a written reprimand for excessive tardiness. Later that evening, after returning from a trip to the restroom, she found a letter on her desk with a picture of a distastefully drawn woman with hair sticking out on her head that said, "Don't make me open a can of whup butt young lady. SMILE! P.S. -- no I don't have anything better to do."

The same day, the former trainer told the machine operator's supervisor that she had been sleeping on her machine. The supervisor called the employee to her office to discuss the matter and then sent her back out to her machine to resume work.

Later that evening, the former trainer told the supervisor about an argument she and the machine operator had, which allegedly was witnessed by another white female employee. The supervisor called the machine operator and the alleged witness into her office to discuss the matter and try to resolve the situation.

At the meeting, the "witness" began cursing the machine operator, calling her a "black son-of-a-bitch" (interesting, since the machine operator is a woman) and a "n UL UL ULr" and saying she would "kick her ass." The supervisor suspended both women and instructed them not to return to work until they spoke with the plant manager. The machine operator claimed her co-worker continued to threaten her, which prompted her to ask two male employees to wait with her until her ride came to pick her up.

After being sent home, the co-worker called the plant manager at his home and gave him her side of the story. Meanwhile, the machine operator was notified to report for her regular shift. She said that when she arrived, she saw the plant manager talking and laughing with her "harassers."

The next day, the plant manager told the machine operator not to attend the training program she had been scheduled to attend. Three days later, he terminated her for poor job performance, specifically for tardiness and sleeping on the job.

Investigation

After her termination, the machine operator complained to another manager. The human resources department conducted an investigation but was unable to find any support for her claims of wrongful termination and racial harassment. She then filed a claim with the Equal Employment Opportunity Commission, which found no cause to support her claims of race discrimination, racial harassment, or retaliation.

The employee eventually filed suit against her former employer, claiming she had been the victim of racially motivated harassment by her co-workers, unequal application of the company handbook based on her race, and retaliation for complaining about the alleged racial harassment

and unfair application of company policy. The company asked to have the lawsuit dismissed, but the court denied that request.

Court action

The court said a jury will have to decide whether discrimination was the real reason for the employee's discharge. The company said tardiness was one of the principal reasons for her termination, but there was only one written warning about tardiness, issued on the same date as the altercation with her white female co-worker. Apparently, the court found that suspicious. It also said a jury should decide whether the machine operator was retaliated against for complaining about the alleged harassment.

Finally, the court observed that although the employer argued that the machine operator never reported any alleged harassment until after she was fired and that it conducted an immediate investigation as soon as she complained, the employee said she complained on a daily basis -- every time her supervisors called her in to discuss her co-workers' complaints about her performance. Therefore, said the court, a jury would have to decide whether the employer knew about the alleged harassment, too.

Bottom line

Although the employee's evidence in this case was pretty weak, it was enough to get her case to a jury, which is always a risky proposition. What can you do to avoid this situation?

Make sure your supervisors get you involved on the front end of employee altercations. Your early intervention can go a long way toward resolving employee disputes before they become lawsuits. If an employee claims she's being singled out or picked on, take it seriously and investigate her allegations -- even if she doesn't mention the word "harassment" or tell you she feels the treatment is directed at her because of her race or gender. Get the facts, clear the air, and put it in writing before the situation spins out of control and results in a lawsuit.

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