



Avoiding Employment Law Pitfalls



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Don't let this happen to you...
“Mmmm....gummy Venus...”



More Bad Things...

- ☞ “AstraZeneca pays \$250,000 in Sex Discrimination Settlement”
- ☞ “Years Long Battle Against Walmart Heads to the Supreme Court”
- ☞ “Randstad US Charged with Discrimination for Denying Job to Man with Aspergers”

What do defense attorneys look for in a “winning case”?

- Safety concerns (jury becomes the conscious of the community)
- Obvious signs of hostile work environment
- Employer breaking the bounds of common decency

- Inept Human Resources (or similar)
- Employer retaliation
- Quid Pro Quo Sexual Harassment
- Good Visuals (translates to Bad Visuals for the Employer)
- Trouble for the Squeaky Clean Employee

Possible Pitfalls

- ☞ Hiring Issues
- ☞ Lack of Documentation
- ☞ Breakdown of the System
- ☞ Discrimination Suits
- ☞ Employee Privacy

Hiring Issues

- ☞ Job postings
- ☞ Background Checks
- ☞ Credit Checks
- ☞ Prior Employers
- ☞ Interviewing
- ☞ Record reasoning in hiring/lack of hiring

Lack of Documentation

- ☞ I cannot repeat this enough: document well, document consistently!
- ☞ Actions without support= actions that can be attacked
- ☞ Spread the word!
 - Supervisor Liability: hold them accountable

Breakdown of the System

- ☛ A surprised employee= a litigious employee
- ☛ What are your supervisors doing?
- ☛ Is there trouble brewing somewhere?
- ☛ How much should legal interfere?
- ☛ [Parks and Recreation](#)

Discrimination Suits

- ☛ Be on the look out for all types
- ☛ Take complaints seriously
- ☛ Educate and enforce

Employee Privacy

- ☛ NLRB and Facebook
- ☛ *Quon* decision
- ☛ Social media policy

Escher v. BWXT

- ☞ **Overview:** employee, military member, was termed by BWXT (contractor NNSA) for doing work for Naval Reserves while on the clock
- ☞ **Legal Argument:** Escher alleged retaliation in violation of USERRA b/c he had filed two complaints re: company military leave time accounting right before he was terminated. BWXT argued they terminated for a justified reason. Courts agreed with BWXT.

Escher

- ☞ **Background:**
 - Escher had two complaints lodged against him, one vague and one specific. The more specific complaint yielded evidence of his working another job while at BWXT
 - BWXT checked his internet use, email, and phones
 - Narrowly construed complaint that was vague

Escher

What the Manager Did:

- ☞ Talked to the employee to find out his angle; talked to his direct supervisor
- ☞ Compared his actions with those of other employees
- ☞ Bounced ideas of other managers and HR

Escher

- ☞ Things that Could have Gone Better
 - Manager had hesitation about firing Escher based on his military job (she was former military)
 - Consulted higher-up re: decision (can affect your appeals)
 - Escher's supervisor gave him some leniency
 - Common knowledge of misconduct

Escher

- ☞ Escher bore the burden to show protected status was a motivating factor in the adverse decision
 - Temporal proximity
 - Several decision-makers knew about his actions
 - Company was inconsistent in investigating the complaints
 - Disparate impact

Escher

- ☞ Summary judgment granted for the employer in district court and 6th Circuit
- ☞ Why the Employer Succeeded:
 - Consistent discipline
 - Manager owned the discipline
 - Well-documented
 - It also helped that there was little to no merit to Escher's case

☛ **Leslie:** Well, you can relax. All I'm going to do is go in and just say, "We're so sorry. It's entirely our fault."

☛ **City Attorney:** No, no, no. You can't say any of that. It admits liability. You can't say "I'm sorry" or "I apologize." It implies guilt.

☛ **Leslie:** That's insane. I have to apologize. Andy was a victim...

☛ **City Attorney:** You can't say "victim".

☛ **Leslie:** ...in an extremely unfortunate situation.

☛ **City Attorney:** Can't say "unfortunate" and you can't say "situation".

☛ **Leslie:** I can't say the word "situation"?

☛ **City Attorney:** No. It implies there was a situation.
